United States Court of Appeals
for the Second Circuit

APPENDIX

77-1150

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P/S

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-1150

UNITED STATES OF AMERICA,

Appellee,

—v.—

AMREP CORPORATION, RIO RANCHO ESTATES, INC., ATC REALTY CORPORATION, HOWARD W. FRIEDMAN, CHESTER CARITY, HENRY L. HOFFMAN, and DANIEL FRIEDMAN,

Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX OF UNITED STATES OF AMERICA AND ALL DEFENDANTS

Volume IX—Pages A-5441 to A-6120

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Page 64, line 15, through 65, line 25, is admissible only as to the defendant Friend. That omits, of course, line 16.

MS HYNES: Yes, your Honor.

We then come to page 70, line 12, through page 71, line 10, redacting the words on line 4, "in the brief," that is admissible only as to the defendant Friend.

Page 71, line 20 through 72, line 19 is admissible only as to the defendant Friend.

I gather you are going to delete line 12 on page 72?

MS. HYNES: That's correct, your Honor.

THE COURT: Page 73, lines 9 to 18 is admissible only as to the defendant Friend.

We then come to the session on September 9, 1975 of the grand jury held in the morning of that day.

Page 2, lines 15 through 25 is admissible.

Page 3, lines 2 through 25 are admissible.

Page 4, lines 2 through 12 are admissible.

The grand jury session of September 9, 1975, in the afternoon.

Page 100, lines 8 through 20, is admissible only as to the defendant Friend.

I note the government wishes to change the reading of line 20 to be 50,000 families which was a conservative figure. This omits the word "we thought."

Page 108, lines 13 through 23, omitting the first two words on line 13, through line 23, is admissible only as to the defendant Friend.

We are now up to September 11, 1975, the afternoon session of the grand jury.

Page 57, line 25, through page 60, line 13, admissible only as to the defendant Friend.

Page 69, line 13, to page 70, line 3 is admissible.

You are going to have to get the number of the trial exhibit on line 14 on page 69.

MS. HYNES: Yes, we will do that, your Honor.

THE COURT: Page 71, line 22, to page 72, line 9, is admissible.

Page 75, lines 12 to 15, are admissible.

Page 77, lines 10 to 17, are admissible solely as to the defendant Friend.

Page 82, lines 8 to 12 --

MS. HYNES: 10 to 12, your Honor.

THE COURT: 10 to 12, sorry.

Admissible only as to the defendant Friend.

Page 83, lines 6 to 12, admissible only as to the defendant Friend.

Page 84, lines 8 to 13, the objection is sustained.

We come now to October 21, 1975, afternoon session of the grand jury.

Page 58, line 20 through page 60, line 21, redacting the first three words on page 59, line 19, this is admissible only as to the defendant Friend.

MS. HYNES: Your Honor, with respect to when we go to read this grand jury testimony, does your Honor want one person reading or does your Honor want a person giving answers and another giving questions?

THE COURT: One person reading. It's very short.

MR. FLEMING: Your Honor, I take it we have our objections?

THE COURT: You have an objection to the rulings that I have made.

Now we have another matter --

MR. ARKIN: Your Honor, I take it there is no need for us to renew our motion to sever upon this basis?

THE COURT: The motion is denied.

MS. HYNES: Your Honor, I have one further point to raise, and that is, because the government does have documents that we will be offering and there will be objections to some and some have been already stipulated to, after the testimony is completed today, if your Honor wants to go through those objections out of the hearing of the jury and rule on them, it may speed up matters.

THE COURT: It may speed up matters if during the morning recess you sit down with counsel or during the lunch hour and narrow your objections to the ones that are really going to be made.

MS. HYNES: We have tried to do that and we have done it with most documents and, basically, we are going to have your Honor's ruling.

We will continue with any documents that we haven't had discussions with, but basically this has been done.

THE COURT: I will only rule on matters over which you have had discussions and the defendants persist in their objection.

MS. HYNES: Okay.

THE COURT: I have a proposed stipulation regarding disclaimers or, rather, I should say, counter-stipulations regarding disclaimers.

I don't see the need for the government to use any reference to the effect of the state law.

In the first place, there were four people who have testified on this, Mandel, Bondy, Letterman and

Perlmutter.

Mandel, Bondy, Letterman and Perlmutter have said nothing contrary to what the law will be.

There is some statement by Perlmutter on cross in response to a question put by Mr. Arkin which embraced the word "an approval."

I don't think this needs a stipulation. It could be rebutted by the government if it becomes obvious that this is a contention of the defendant on its own case.

On the other hand, if the defendants are going to argue to the jury that they had approval, I will charge the jury that the act of the state regulatory bodies was not approved, so I don't see any need for a stipulation at this time.

MS. HYNES: Your Honor, I think we need the position of the defendants on this.

THE COURT: You will find out on the defense what their position is.

MS. HYNES: Okay.

THE COURT: If their position is they have approval, I am telling them that I will charge the jury that the actions of the state regulatory body is not approval.

MS. HYNES: Okay. Then I would ask your Honor to strike that portion of Mr. Perlmutter's testimony on cross examination with respect to approval.

THE COURT: I will not strike it. It was a long involved sentence put by Mr. Arkin which tacked on the word "approval."

MR. DEVORKIN: May we have a moment, your Honor?

THE COURT: Yes.

(Continued on next page.)

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MS. HYNES: Your Honor, there is another point to this, and that is with respect to the advertising, there are two letters that the government would seek to offer with respect to notice to the defendants on what filing advertising meant with respect to the agencies, and these are 777, which we can hand up to your Honor, and --

THE COURT: You mean the Ohio letter?

MS. HYNES: And 778.

No, there are two different exhibits, your Honor. They are the two exhibits that we referred to in our brief.

THE COURT: I am not letting in 777.

MS. HYNES: This is a different Ohio letter. It is not the same one as your Honor previously ruled out.

THE COURT: Your brief, page 7 says:

"Similarly, the government will offer Exhibit GX 777, a letter from AMREP's Ohio counsel and Chester Carity stating as to 'Your Golden Future' page 12, Items 82 and 83."

MS. HYNES: Yes.

THE COURT: About comparisons between lands are prohibitive right?

MS. HYNES: Yes. "But the script is otherwise acceptable. The division has directed me to advise you, however, that its approval of this advertising material does not relieve the licensee from its responsibilities for the truth of its statement or for possible" --

THE COURT: That is right. I am not going to let that in, because that is one of thirty-six states and that does not raise a federal standard of misrepresentation, number one, and, number two, I haven't heard any testimony that these defendants violated in Ohio the rules of Ohio and this only applies to Ohio.

MS. HYNES: I am really addressing these exhibits to your Honor's statement that if the defendants argue approval, and it seems to me from the testimony that they have elicited from Mr. Perlmutter on cross that they are attempting to argue approval on advertising by the state authorities --

THE COURT: I would keep it as I suggested for rebuttal if necessary.

MS. HYNES: Okay, your Honor.

THE COURT: Certainly one state's ruling out of thirty-seven does not set a federal standard of scheme to which the defendants are held. It would be highly prejudicial if only one state out of thirty-seven had such a requirement and you brought it in and left the impression with the jury that this is what every land developer had to do throughout the country and, of course, that is not the rule.

Secondly, if they violated the Ohio rule, let Ohio indict them and prosecute them. The federal court is not the forum for that.

All right. Are we ready to go with the jury and the witness?

MS. HYNES: Your Honor, there is one other item we might clear up before the jury comes out.

When we broke the last time, the government had offered 657, which was a memo from Jim Colegrove to Sherman Lurie and it related to the Albuquerque home sales market and it was dated in 1973.

Your Honor asked me at the time whether we were going to call Mr. Lurie, who was on our will-call list, and I told you at that time I did not know, and you indicated that I should tell you whether we are going to call him.

We are not going to call Mr. Lurie and we will renew our offer of 657 at this time.

THE COURT: Why don't you wait until you get all the rulings on the exhibits?

MS. HYNES: Okay.

MR. ARKIN: Your Honr, I understand from Ms. Cross that sometime Friday that Ms. Hynes informed my office that the prosecution intended to call a man named Robert Stevens.

Robert Stevens, I have come to learn, is somebody associated with some film company, Bandolier Films. But he was not either on the will-call or may-call list We have never seen him, we have never done any preparation with respect to him, and this weekend obviously was not sufficient time for us to find him, to speak to him or to prepare for him.

Since he was on neither list, I would ask that he not be a witness.

THE COURT: Who is this man?

MR. KAUFMAN: Your Honor, Mr. Stevens is a person who had a company in Albuquerque called Bondolier Films. Bandolier Films was retained to help in the creation of the film "The West Side Story".

We informed defense counsel that Mr. Stevens was going to be called and we informed defense counsel where Mr. Stevens was staying in Manhattan, and they did have the opportunity to contact him this weekend if they wanted to.

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We didn't talk to Mr. Stevens until this weekend for the first time as well.

THE COURT: He was not on the list?

MR. KAUFMAN: No, your Honor, we didn't know about him.

THE COURT: He can't testify.

MR. KAUFMAN: Your Honor, we have eliminated a number of witnesses on the will-call list who possibly could have testified about this matter, replaced them with Mr. Stevens who can.

Mr. Stevens is the only person in a position to identify the original uncut version of The West Side Story which AMREP made.

The uncut version of The West Side Story is something that is important to show the difference between the edited version of The West Side Story which was shown to Rio Rancho customers and the uncut version.

If I may have just a minute, your Honor.

THE COURT: I am ruling on a different basis.

You have had a whole year since these defendants pled not guilty, four of you working on preparing the case for trial. You can't come in at the eighth week of trial, after you submitted a list of witnesses of four hundred sometime in the middle of August, reduced that when I asked you to in September to a will-call list, and now, as I say, in the eighth week of trial come up with a witness.

MR. KAUFMAN: Your Honor, I believe you told us --

THE COURT: He cannot testify, Mr. Kaufman.

MR. KAUFMAN: Can I just say one thing?

THE COURT: I sustain the objection. You have been talking long enough.

MR. KAUFMAN: Your Honor, I have just one additional thing to say.

THE COURT: Okay.

MR. KAUFMAN: Your Honor at one time had ruled that with respect to people needed to authenticate documents or exhibits your Honor would not hold us to calling people only on a list.

Mr. Siegal -- excuse me, Mr. Stevens received a copy of the unedited version of West Side STory. He will be called -- and he produced it pursuant to subpoena. He will be called to identify it and we will offer it and it has been a premarked exhibit that everybody --

THE COURT: The objection is still sustained. Bring the jury in.

(Jury present)

MR. KAUMFAN: Your Honor, we would first

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offer Exhibit 69, which was the exhibit we were just discussing.

THE COURT: Any objection?

Is this in addition to the one we have seen?

MR. KAUFMAN: This is different than it, your Honor. This is the exhibit we were just discussing a few minutes ago.

THE COURT: Are you through with Clymer?

MR. KAUFMAN: Yes, your Honor.

THE COURT: Is this involved with Clymer's testimony?

MR. KAUFMAN: No. Clymer is finished.

THE COURT: I thought he had to come back?

MS. HYNES: No.

THE COURT: It's all right with me.

All right.

Are you going to show a movie now?

MR. KAUFMAN: If it is accepted into evidence.

MR. ARKIN: We don't accept it. We object, actually.

We ought to have a side bar.

THE COURT: All right.

(At the side bar)

THE COURT: All right. What is this?

MR. KAUFMAN: Your Honor, this is the uncut version of the film that we were talking about.

We offer it, and we don't believe there is any dispute as to its authenticity.

THE COURT: What is its probative value?

MR. KAUFMAN: The probative value is, your Honor, that this film shows the original West Side Story film. It showed that it focused on five different subdivisions, it shows knowledge that there was planning for development on the lava escarpment that we previously heard testimony as being unsuitable for development --

MR. ARKIN: Keep your voice down, please.

MR. KAUFMAN: It shows knowledge of the subdivision called West Gate Heights, which is the development on Atrisco land grant, which testimony has previously been elicited was unavailable for development.

This shows the defendants knowledge of those aspects of development on the west mesa.

Moreover, it shows knowledge of other available subdivisions on the west mesa closer to Albuquerque than Rio Rancho Estates was.

These developments, these other developments, were all excised from the West Side Story film that were shown to customers at the dinner parties, and we want to offer the original version of the film to show --

THE COURT: To show they had knowledge of what could be done?

MR. KAUFMAN: Yes.

MR. ARKIN: May I respond, your Honor?

THE COURT: Yes.

MR. ARKIN: First of all, there is a dispute as to authenticity. Apparently there were several versions of West Side Story. That is one.

Secondly, in respect of showing knowledge, I don't know whose knowledge it would show, because there is no link between any particular individual or, for that matter, any particular person within the corporation in respect to the contents of the original West Side Story, and as Mr. Kaufman acknowledged, the only thing ever shown to any customer at any dinner party or anyplace else, it was West Side Story as was already put in evidence.

THE COURT: Somebody said Hoffman did the movie, didn't they?

MR. FLEMING: No.

MS. HYNES: Your Honor, there will be documents that will be offered that will show that Mr. Hoffman did have connection with making the West Side film and did have connection with --

THE COURT: Some witness in here, and I don't know his name, said Hoffman was tied up in making the film.

MS. HYNES: That's correct.

MR. FLEMING: That was the Golden Future.

THE COURT: I may have my films twisted.

MR. ARKIN: There were a couple of films. I don't recollect that testimony, either, but I don't dispute it.

This is the West Side Association, which is a sort of West Side Chamber of Commerce.

What happened was that this was not shown at the dinner party, what was shown at the dinner party was the one that your Honor has seen and what the jury has seen, and this is probably one of several different versions of West Side Story, you know, made at various times by the West Side Association.

Whether this one was the one which was utilized or not there is a serious question.

THE COURT: You mean this witness that I sustained your objection to is the fellow that is going to testify that your people knew this film existed?

MR. ARKIN: I don't know --

MS. HYNES: Yes.

MR. KAUFMAN: That's right, your Honor. He would authenticate this film.

THE COURT: Yes. But would he say that the defendants knew about it?

MR. KAUFMAN: Yes.

Well, he would say that -- no, he will not say the individual defendants knew about it.

He will say that this film, though, was made by AMREP, he was paid by AMREP and whatever services they provided were services provided to the production crew that AMREP sent out and he will authenticate this film as the original film.

THE COURT: That puts a different version on this, doesn't it, Mr. Arkin?

You produced it, you paid for it.

MR. ARKIN: No, wait a minute.

First of all, as I understand the facts, the West Side Association produced West Side Story.

Then there was a subsequent version made for AMREP for its sales dinners which we paid for.

To be sure, the original version, as a member of the West Side Association, AMREP together with other people made contributions to West Side Association, which is a real association, which exists to this very day in

Albuquerque, and of which Rio Rancho is merely one member.

THE COURT: But he says this witness is going to testify you paid for the whole thing.

MR. ARKIN: That is just not so.

THE COURT: That is what his representation is.

MR. ARKIN: Is that the representation?

MR. KAUFMAN: Yes, yes.

MR. ARKIN: My understanding of the facts --

THE COURT: Maybe you better go out and talk to that fellow.

I sustained your objection, but --

MR. ARKIN: I think we ought to talk to him and get that out.

My understanding is the opposite, but if --

THE COURT: Let us let the jury go.

(In open court)

We will have a recess.

(Recess)

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(In open court - jury not present)

MR. ARKIN: Your Honor, after speaking with Mr. Stevens, we withdraw our objection to the proposed exhibit.

We continue our objection to his being a witness, which I understand was sustained in any event.

THE COURT: Yes.

MR. KAUFMAN: Your Honor, we still renew the application to call him as a witness to establish AMREP's connection with the making of the film, as we discussed at the side bar.

MR. FLEMING: My understanding is that this witness was subpoenaed or something over a year ago and was told he was not going to appear and not placed on the witness list.

THE COURT: My problem with it is he is not going on as a matter of authenticity, he is being put on substantively to prove that these defendants are guilty.

Now, to put a man on the stand in the eighth week of trial by bringing him in on Friday from Arizona is a little bit late.

These defendants really have had a few minutes to talk to him outside, have not been able to prepare for his testimony. The whole point of giving a witness list is to give the defendants the opportunity to investigate.

Now, the original list came to me, I think, sometime in the middle of August, and we had a pretrial conference in September and it was cut down to will-call. Nobody ever knew he was being called until now on important testimony. This isn't just trivia, from what you told me at the side bar. This is important testimony to put these defendants right in the middle.

I sustain the objection.

MR. KAUFMAN: The exhibit, though, I gather, there is no objection to?

THE COURT: They have no objection to it.

MR. ARKIN: I withdrew my objection.

(Government Exhibit 69 received in evidence)

MR. WEIDNER: There is one further thing.

I understand your ruled a number of portions of Mr. Friend's grand jury testimony will be admissible only as to him.

I wonder if we can request the limiting instruction not be admissible against Mr. Friend but only concerning him and not concerning other defendant.

THE COURT: I don't gather the difference or the distinction.

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MR. WEIDNER: The reason that I suggest that is as we have argued, we believe that some of that testimony, if not most of it, is exculpatory rather than inculpatory of Mr. Friend, and I would prefer, therefore, that the word be "concerning" rather than "against him" since they may get the impression --

THE COURT: I think it is true, some of it is exculpatory.

I will grant you that.

MR. WEIDNER: Thank you, your Honor.

MR. KAUFMAN: Your Honor, we would then propose to play this film at this time.

We can set up in a few minutes.

THE COURT: All right.

MR. KAUFMAN: I would also like, just before we show it, your Honor, if we can just inform the jury that this is -- we have to describe it to the jury in some fashion.

I would like to tell the jury that this is --

THE COURT: Doesn't the trailer indicate who put it out?

MR. ARKIN: Yes.

MR. KAUFMAN: What I would like to say is, this is the original unedited version of West Side Story so the jury knows what thev are seeing in contrast to what has originally be shown.

MR. ARKIN: Your Honor, as I understand it, there was an original original unedited version about three years previous to this one.

I think it would be fair to say that this was a West Side Association film coming out on such and such a date.

If we played it for a few minutes without the jury, perhaps your Honor and maybe even Mr. Kaufman would be satisfied. I understand the first part of it shows it. Maybe that will be enough explanation in and of itself just by playing it.

THE COURT: Or it can be a basis for an oral explanation to the jury.

Sometimes these things go past so quickly, Mr. Arkin, you don't catch them.

Set it up and we will play the beginning.

MR. ARKIN: Yes.

THE COURT: Keep the witness here, though.

(Recess)

(In open court - jury not present)

(Government Exhibit 69 was played for the Judge)

THE COURT: There is no indication there, Mr. Arkin, of time.

MR. ARKIN: No indication of time, you are quite right, your Honor.

I would stipulate to the date, if you know what it is.

MR. KAUFMAN: I believe the year is 1967.

MR. ARKIN: I would stipulate to the date.

(Pause)

MR. ARKIN: Ms. Cross says it is December of 1967.

THE COURT: What is the exhibit number of the other one we saw?

MR. DEVORKIN: It is a part of Government Exhibit 70, your Honor. There are two films on the same reel.

THE COURT: You don't have any date on West Side Story for Exhibit 70.

What was the date?

MS. HYNES: I am sorry, your Honor?

THE COURT: What was the date of the West Side Story version that the jury has seen, Exhibit 70?

MS. HYNES: We have scripts on the West Side Story that are '68.

THE COURT: Is the one they saw a '68 version?

MS. HYNES: I believe that's right.

MS. CROSS: West Side Story has an NYA number, I believe, in February -- no, I'm sorry.

MR. KAUFMAN: Your Honor, we have a memo dated November 30, 1967 from Sommerholder to Chester Carity, "Subject: The West Side Story film," in which they are talking about distributing copies of the films to different entities, so as appears from this memo, the film was completed by November 30, 1967, and we would offer this memo.

THE COURT: What are you talking about now, Exhibit 69 and 69-A?

MR. KAUFMAN: Yes, your Honor.

MS. CROSS: Your Honor, there is a letter December 6th from Arthur Brown of the West Side Association to Bandolier Films stating that he enjoyed a preview of the film The West Side Story.

I think it would probably be easiest if we just agree late 1967 was the version which --

THE COURT: The one we are going to see now?

MS. CROSS: Yes.

THE COURT: Is that all right with the government?

MR. KAUFMAN: Yes, your Honor.

THE COURT: 69 is the film and 69-A the transcript?

MS. HYNES: 69-A is the transcript of this film, your Honor. We are not offering the transcript at this time.

THE COURT: All right.

We tell the jury, then, they are going to witness a 1967 version of the West Side Story film, they have already seen a 1968 version of it?

MS. HYNES: Your HOnor, I think that that is misleading.

We have two documents that we would like to offer that relate to the West Side Story and the participation by Mr. Hoffman in conjunction with the West Side Story, together with -- basically the two exhibits are 491 and 638, and I think we should offer these exhibits at this time so the jury is not misled.

THE COURT: Show them to counsel.

(Pause)

MR. FLEMING: Your Honor, would your Honor like to be bothered with a problem we have with regard to the government's next witness?

THE COURT: Can't we move on these exhibits first?

MR. FLEMING: That's what I thought.

MR. ARKIN: I will be ready to respond in a moment, your Honor. I just want to read the last four lines of what I just have in my hand.

(Pause)

MR. ARKIN: Your Honor, with one minor suggestion, which I don't believe the government will have any problem with, we have no objection to 638 nor the first page of 491, which I understand Ms. Hynes wishes to offer and not the balance of 491.

I would only ask that the government stipulate with me that Mr. Sommerholder, in addition to being an employee of Rio Rancho, was also president of the West Side Association, which is a fact.

MS. HYNES: If you provide me with the dates, I will have no problem stipulating to that.

MR. ARKIN: Well, he was president in November of 1967. His exact period of tenure I don't know.

He was president at the time of this memorandum from him to Chester Carity, Ms. Hynes, that's the only point.

MS. HYNES: There are two memoranda that we are dealing with, one is November 8, 1967 and one is

November 30, 1967.

If we have the dates of Mr. Sommerholder's tenure, I don't have any problem stipulating when he was president as long as I know whe he was president.

MR. ARKIN: Do you know when he was president?

MS. HYNES: I say, as long as I know.

THE COURT: No.

MR. ARKIN: I don't have the exact dates of his tenure.

My understanding was that he was president during 1967.

THE COURT: You can find out. It doesn't make any difference for the admission of these documents, I assume.

MR. ARKIN: Well, the only problem is that, an inference can be drawn from the jury that West Side Association was a front for Rio Rancho, if you will, because Sommerholder worked for Rio Rancho and was an officer of West Side Association, and I think if you don't have that in the record for us to make an argument to the jury at some point --

THE COURT: You can get it in the record, but you don't need it now. You stipulate that at any point, because that is really summation, nothing else.

MR. ARKIN: All right. So long as the government has indicated their willingness to do that, we have no problem with that and we will get the exact dates.

(Government Exhibits 491 and 638, respectively, received in evidence)

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MS. HYNES: So the record is clear, may I ask Mr. Arkin to stipulate that AMREP and Rio Rancho did, in fact, participate in the making of this film which has been received in evidence, Government's Exhibit 69, so the record is clear on that and the jury isn't misled?

MR. ARKIN: Well, I certainly wouldn't want the jury to be misled and I want the record to be clear, provided we stipulate that as a member, together with other organizations on the west side, we participated as a member of the West Side Association.

THE COURT: You mean by contributing?

MR. ARKIN: Yes, sir.

THE COURT: I think Ms. Hynes wants you to go further than that.

MR. ARKIN: Well, I am not going to do that.

MR. FLEMING: I won't either.

THE COURT: That is what the witness was supposed to testify to.

(Pause.)

THE COURT: All right. Therefore, I gather that Exhibits 491, 638 and 69 are now in evidence.

The jury will be told that they will be viewing a 1967 -- I gather it is a late 1967 version of West Side Story, they have already seen a later version that was made in 1968.

Bring the jury back.

(Jury present.)

THE COURT: Ladies and gentlemen of the jury, you are now going to see what is known as a late 1967 version of West Side Story.

You have already seen, if you recall, a number of weeks ago, a 1968 version of that film. This is an earlier version of the film.

MR. KAUFMAN: Your Honor, I just have to rewind it a little bit to get back to the beginning.

(Pause.)

(Government's Exhibit No. 69 was played to the jury.)

MR. KAUFMAN: Your Honor, at this time I would like to read the two exhibits, 638 and 491.

(Mr. Kaufman read from Government's Exhibit 638 in evidence to the jury.)

(Mr. Kaufman; read from Government's Exhibit 491 in evidence to the jury.)

MS. CROSS: Your Honor, can we have the entire of the first exhibit that Mr. Kaufman read, including the parts that he left out?

THE COURT: What did he leave out?

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MR. KAUFMAN: Your Honor, I referred to the nine items to be included in the film. I don't think it is necessary to read all of them.

THE COURT: Read them.

(Mr. Kaufman read from Government's Exhibit 638 in evidence to the jury.)

MR. KAUFMAN: Your Honor, at this time the government calls Adam Sporzynski.

I believe Mr. Fleming had an application with respect to this witness if you want to handle it at the side bar.

(At the side bar.)

MR. FLEMING: Your Honor, I understand this witness gave a deposition to the Federal Trade Commission in 1971.

I understand, also, that the prosecution is not in possession of that, or at least they have not produced it to us.

My understanding is that it has been lost somewhere, not necessariily by the U.S. Attorney's office, but lost somewhere by the Federal Government. Although I cannot cite a case, your Honor, I believe the law of the Jencks Act of what is included in Jencks Act material since the deposition had to do with the subject matter of his testimony, which I think the prosecution will admit, that the loss of Jencks Act material, even through inadvertence or carelessness, is sufficient to bar the witness from testifying.

MR. KAUFMAN: Your Honor, we turned over all the 3500 material that the FTC had on Mr. Sporzynski. In that material is a reference to a statement or a deposition that he gave to an attorney for the FTC in 1971.

I have contacted the FTC and asked if they can locate it, and if they can to get it to us.

They have told me that they are unable to find it, that the chances are very good that it has been disposed of in the normal course between 1971 and this date. As far as they know it doesn't exist. We have never seen it, we have never had it. I don't know what it contains. Nobody in the FTC knows what it contains.

There is considerable 3500 material that has been turned over to the defense with respect to this witness. I don't believe the inadvertent loss of a statement five years ago will bar the testimony of the witness. We don't know what type of statement it was. We don't know what it said, and my understanding is if it has been destroyed it was done in the normal course of the FTC's --

THE COURT: Mr. Fleming's objection is that it should not have been disposed of.

MR. KAUFMAN: Your Honor, this was in connection --

THE COURT: The objection is that there was a sworn statement given by the witness to an FTC counsel.

MR. KAUFMAN: I don't know that it was sworn. I don't think Mr. Fleming knows it was sworn.

MR. FLEMING: I can show documents that characterize this as a deposition to I believe a Mrs. or Miss Gail or Carol Emmerling, an attorney for the FTC in 1971.

One, apparently she is still employed by the Commission.

Two, it could not have been destroyed in the usual practice of things since that proceeding is still pending.

Three, the Court of Appeals gave the government, upon their appeal, the right to call whatever victim witnesses they chose to call and I don't think they should be allowed to choose out of 80 a witness whom they know gave a prior statement --

THE COURT: Out of 70.

MR. FLEMING: A witness they know or certainly had reason to know had given a prior statement to the government which appears to have been a sworn statement which they could verify with the Commission knowing they do not have it in their possession.

MR. ARKIN: Your Honor, there is one thing you should also know. Miss Emmerling, who is an FTC attorney, attended some of the FTC sessions which were held in the spring, you know, before we commenced our trial and before your Honor's order barred them from proceeding.

They actually attended, not participated, but at least she observed, so she is still around, she is still an employee, apparently, and if there is such a deposition, which is alluded to a couple of times in the papers, she should know where it was.

THE COURT: Have you contacted her?

MR. KAUFMAN: I spoke to George Schulman in the Los Angeles office. It is my understanding that Miss Emmerling is in the regional office. He said they checked with Miss Emmerling and they have no knowledge of the existence of this statement and as far as they can ascertain this statement does not exist any more.

THE COURT: This is a count witness?

MR. ARKIN: Apparently a count witness.

MR. KAUFMAN: I don't believe that whatever type of statement that this was was taken in 1971 pursuant to the investigation that has culminated.

THE COURT: Why else would they take it?

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MR. KAUFMAN: I don't know the circumstances of the 1971 interview.

I don't think we are aware of any other type of investigatory work that the FTC was doing on Rio Rancho Estates back in 1971.

All the information that we have heard is that the FTC investigation started, I believe, in March of 1973 or 1974.

THE COURT: Obviously they were investigating Rio Rancho in 1971, or they wouldn't be taking the statement.

MR. KAUFMAN: Your Honor, we don't know whether this was a written statement, we don't know what type of statement it was.

It may have been that Mr. Sporzynski just called the FTC because he was unhappy about something and they sent somebody to talk to her.

THE COURT: This Miss Emmerling, wouldn't she know this?

MR.KAUFMAN: A statement she may have taken five years ago?

THE COURT: Well, she would know whether she was taking a statement in connection with an investigation five years ago. That would be very simple to find out.

MR. ARKIN: The witness used the term "deposition" two times, your Honor. She used the term deposition once to a statement he made to Paul Mahon, the ubiquitous investigator of Mr. Fleming's office, and also a letter written to Ms. Hynes, I believe, in response to a questionnaire which was sent to him.

In terms of the date of the deposition, I don't know what the date is.

MR. FLEMING: I think it was 1971, but I have to look at the notes again, but there is no question he characterized it as a deposition.

MR. ARKIN: Two times as a deposition.

THE COURT: I think I will let it in subject to a motion to strike.

I don't know why it should be excluded, unless you can give me some specific authority for doing it.

MR. FLEMING: Do you remember the case law?

MR. LAUER: I just can't remember it.

(Continued on next page.)

(In open court - jury present)

MR. KAUFMAN: The government calls Adam Sporzynski.

ADAM P. SPORZYNSKI,

called as a witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION

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BY MR. KAUFMAN:

Q Mr. Sporzynski, how old are you?

A I will be seventy-one in January next year.

Q Where do you live now?

A 17516 Neff Road, Cleveland, Ohio.

Q Where were you born?

A Warsaw, Poland.

Q When did you come into the United States?

A November 14th, I guess, 1948.

Q Are you an American citizen?

A Yes.

Q What is your professional training?

A I got a doctor's degree in chemistry from the University of Poland. I am a chemical engineer by professio

Q And you received doctorate degree, is that correct?

A Doctor's degree in 1930, University of Warsaw, Poland.

Q What type of work have you done since you have been in the United States?

A Research. Strictly research for Chrysler Engineering, Chrysler in Detroit, General Electric in Coshocton, Ohio; a small company in Ypsilanti, Michigan, Gar Wood Industries, and my last job was TRW in Cleveland. The biggest employer in Cleveland.

Q When did you stop working for TRW?

A There is a mandatory retirement at TRW. Anybody reaching the age of sixty-five has to go. I couldn't continue any work for TRW unless I could obtain a consulting position, which I did.

Q When did you retire from TRW?

A 31st of January, 1971.

Q Have you been working since then?

A Yes.

Q What type of work do you do?

A I am doing consulting work and quality control for two firms: U.S. Borax and Chemical Corporation in California. Of course, they use me in Ohio or Illinois. And Graphite Sales, in the greater Cleveland area.

Q Do you own any land at Rio Rancho Estates?

A Yes, I do.

Q How much land do you have there?

A I have ten acres of residential and two lots commercial unit.

Q Have you paid for all that land as yet?

A I paid all together about $25,000, maybe up to $30,000 for the lots I own, and I still owe, I have a mortgage of almost exactly $5,000.

Q How much of the land do you own outright? In other words, how much of the land have you fully paid for?

A Four acres all together of residential.

Q And you are still paying for the six acres plus the two commercial lots?

A Correct.

Q How have you made payments on this land?

A By installments, paying from about $150 a month up to close to $300, when I was working. Now I am paying $147 a month.

Q How actually do you make the payments?

A By check sent to Chemical Bank in New York. I believe the name is Chemical Bank.

Q I show you what have been marked Government Exhibits 129-N, O and P.

Do you recognize those?

A Yes. Those are statements of my payments starting from the year 1967, I believe.

MR. KAUFMAN: The government offers 129-N, O and P.

MR. ARKIN: Mr. Sporzynski, are these exhibits things you actually received yourself?

THE WITNESS: Yes, I did ask for these. They are about a year old. They are through December --

MR. ARKIN: You received them.

THE WITNESS: Yes, I received them, yes.

MR. ARKIN: We have no objection.

(Government Exhibits 129-N, O and P, respectively, received in evidence)

Q When did you first hear of Rio Rancho Estates?

A At the end of 1966, somebody called home, we were home, and my wife, and invited us to dinner meeting. I believe the name of the man was Mike Bernard. He was one of the salesmen working for Rio Rancho.

Q Did you go to that dinner with your wife?

A Yes, we did. Both my wife and myself.

Q And were you show films at that dinner?

A Correct. Films and a short speech.

Q Did you buy land at that dinner?

A Yes, we bought one acre. We paid $40 down.

Q I show you what has been marked Exhibit 129-W for identification and ask if you can identify that.

A Yes, I do.

Q Is that your signature on that document?

A Correct, yes. And my wife's too.

Q Is this the contract for the land that you bought?

A Right.

MR. KAUFMAN: The government offers 129-W.

MR. FLEMING: We have no objection, your Honor.

(Government Exhibit 129-W received in evidence)

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MR. KAUFMAN: If I might briefly read from this, your Honor.

(Mr. Kaufman read to the jury from Government Exhibit 129-W in evidence)

Q Why did you buy land at Rio Rancho at that dinner?

A For security, for investment, and maybe in the long range, maybe for to settle down. But my wife, being a medical doctor, she might have difficulty in obtaining reciprocity, medical reciprocity. But mostly for investment and security. I was going to retire in about five years time, and I have no pension from my company. No company I work more than ten years, which is required to obtain vested interest.

Q You are talking about in pensions?

A That's right. I have no pension except for Social Security.

Q What did you intend to do with your Rio Rancho investments after you retired?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q Did you attend any more Rio Rancho dinners?

A Yes.

Q Approximately how many?

A Approximately all together ten. Maybe one more was attended with my wife also.

Q Most of the additional dinners you attended by yourself, is that correct?

A Correct.

Q What year was it that you attended the last Rio Rancho dinner that you actually sat through?

A The one which I tried to --

THE COURT: No, what's the date? That is all we are asking you.

A To my best knowledge, was end of 1970, the last dinner I attended.

Q Why did you go to these additional dinners?

MR. ARKIN: Objection, your Honor.

THE COURT: Overruled.

A To buy more property, which I did; to see how the area is improving; and also to ask questions which will be pertinent to whatever I bought at different times.

Q Did you buy additional land at these dinners?

A Yes.

Q I show you Exhibit 129-S. Can you identify that?

A Yes. My signature and my wife's signature.

Q 129-Q?

A Yes.

Q Is your signature on there?

A That's right.

Q 129-V?

A That is right.

Q Doesyour signature appear on there?

A Yes.

Q 129-T; can you identify that?

A Correct, yes.

Q Does your signature appear on that?

A Yes, sir.

Q Are these four contracts with respect to your additional purchases of land at Rio Rancho?

A Correct.

MR. KAUFMAN: The government offers 129-S, Q, T and V.

MR. FLEMING: We have no objection, your Honor.

(Government Exhibits 129-S, Q, V and T, respectively, received in evidence)

MR. KAUFMAN: May I just read briefly from these, your Honor?

THE COURT: Yes.

(Mr. Kaufman read to the jury from Government Exhibits 129-S, and 129-Q in evidence)

Q Referring to 129-Q, can you tell us which land that is the contract for?

A Yes. This is commercial land.

Q Those are the two commercial lots?

A Yes, two lots.

(Mr. Kaufman read to the jury from Government's Exhibit 129-V and 129-T in evidence.)

Q Mr. Sporzynski, on 129-W, 129-T , 129-V --

THE COURT: Did you say W?

MR. KAUFMAN: Yes, your Honor.

THE COURT: That's not in evidence.

MR. KAUFMAN: It's marked as being in evidence, your Honor.

THE COURT: W?

MR. KAUFMAN: Yes, your Honor.

THE COURT: November 23rd?

MR. KAUFMAN: Yes. That's the first purchase.

THE COURT: All right.

Q With respect to W, T, V and S, either your name or initials appear next to language which reads as follows:

"Buyer acknowledges receipt of a copy of the public report or offering statement applicable to the above property as required by state wherein this contract is signed."

The other version of that language is "I/we acknowledge receipt of copy of the restrictive covenants in the public offering statement and prospectus available to the lot."

Are those your initials and your name that appear next to that?

A Yes.

Q Do you recall ever receiving any public offering statements or prospectuses?

A No.

Q Did you receive a copy of the restrictive covenants?

A I believe the copies were on the reverse of the purchase agreement, to my recollection. But nothing extra.

Q What was your reason for buying all this additional land?

MR. ARKIN: Objection.

THE COURT: Sustained. I gather he bought it for the same reason he bought the first one.

THE WITNESS: May I ask, your Honor?

THE COURT: I assume you bought it for the same reason you bought the first one?

THE WITNESS: Not exactly. May I?

THE COURT: Sure.

THE WITNESS: One unit especially, unit 17 where I bought two acres, I was told this was the only unit where horse riding was allowed, which I found out later this wasn't true. That was the extra reason why I bought two acres of land in unit 17.

Q Did you intend to relocate to those two acres in unit 17?

A Well, I bought them, and when I asked for relocation, their conditions were completely impossible for me to meet, namely, I would have to pay extra. They were not exchanged at par. I would have to pay extra and at that time I didn't have -- my payments were high enough, so I couldn't take any extra payments to exchange the units.

Q When was this that you were discussing exchanging your land?

A My recollection was it was 1969; around 1969.

Q Which land was it that you were discussing exchanging in?

A From unit 9, which is furthermost west -- I am talking about my own property Q- to moving to unit 16, whic is the one which was being expanded.

MR. ARKIN: If your Honor please, the other testimony was with respect to unit 17. It was unresponsive. Therefore I move to strike it.

THE COURT: He was just asked why he bought 17, he wanted to race horses, and he couldn't use them. Now he wanted to exchange.

MR. ARKIN: The exchange had to do with unit 9 to 17.

THE COURT: Let's clarify it. You bought unit 17?

THE WITNESS: To have horse riding. But unit 16 I knew --

THE COURT: Wait. You said you were told you could have horses on unit 17?

THE WITNESS: Correct.

THE COURT: Did you ever try to put horses on unit 17?

THE WITNESS: I couldn't, because I was still paying for -- you have to have property all paid for, and I never lived in Rio Rancho.

THE COURT: How have you been harmed as far as unit 17 is concerned?

THE WITNESS: How?

THE COURT: How have you been harmed as far as unit 17 is concerned? Who says you can't ride horses there?

THE WITNESS: When my son visited Rio Rancho last year at my request, they laughed at him, the salesmen. He talked to salesmen at Rio Rancho. They laughed at him, that it's not true, horse riding was never offered in any unit including unit 17. That is the statement from my son.

MR. FLEMING: Move to strike that, your Honor.

THE COURT: I am afraid I am going to have to strike what his son told him. You are going to have to disregard all the testimony the witness has told you about his son told him somebody at Rio Rancho told him. You can only take proof from this person directly, the witness on the stand.

Q Mr. Sporzynski, I'd like to go back to my original question, which was why did you buy all the additional land after your first purchase of land?

A My plan was in -- actually, I started to pay in 1967, February, 1967. I would retire in less than four years. My plan was to have enough property so you can, by selling one acre of land per year, I could have like something like a pension, which I didn't get.

So this was security for myself and of course something to live on. Of course I am still married to my wife, but I'd like to be more independent, like everybody else.

Q Did there come a time when you made initial attempts to try to resell any of your land?

A Correct. This is, to the best of my recollection, it -as 1969 when I worte letters to Rio Rancho, Mr. Sommerholder, vice president at that time. And then I talked to the salesman at the dinner meetings, and there I was told a resale office will be opened in December that year, which was 1969, and they moved it to April of the next year, if I remember right.

And only later I was told, again by correspondence or orally, that the resale office will never be opened, probably, because the company is a development company, not a real estate company, so to speak.

Q Had you been told at the dinners you attended that the company would at sometime open a resale office?

A Correct. And not only once; a few times.

Q I show you what have been marked Government's Exhibits 129-M, 129-L and 129-K. Can you identify these exhibits?

A Yes. I identify my signatures, and the text of the letters.

Q Are these three sets of letters that you sent to Rio Rancho and the responses thatyou received?

A Yes, correct.

MR. KAUFMAN: The government offers 129-M, 129-L and 129-K, without the handwriting.

THE COURT: Can you start with K and go to M, instead of going backwards?

MR.KAUFMAN: That is the way they were marked, your Honor.

MR. ARKIN: I will consider them in order, your Honor.

(Pause.)

MR. ARKIN: No objection to 129-L. I'm sorry, I said I would consider K first. I didn't do that.

I take it, Mr. Kaufman, you redact the handwriting and the stamp in the upper left-hand corner, is that right?

MR. KAUFMAN: Yes.

MR. FLEMING: Your Honor, I do object to the letters written by the witness as hearsay.

THE COURT: Let me see.

(Pause.)

(Continued on next page.)

4.AM

THE COURT: I will see counsel at the bench.

(At the side bar.)

THE COURT: This doesn't seem to be complete, this first one, which is Exhibit M.

He refers -- this Sporzynski letter -- to Mr. Cohen.

He refers to the letter of September 26th and the 3rd in which the witness claims he was told he could transfer the property in question, but there is no letter to that effect either the September 26th or October 3rd letter.

In response to the witness' letter of October 11th, contained in Exhibit M, Rio Rancho says, "As we told you, we can't assist you with it."

That doesn't make sense to me, and I assume you are putting it in for a representation that they could do it.

In other words, the witness is saying, "You told me that you could do it," pursuant to some lter that is dated there, either the 26th of September or October something.

Rio comes back, "In that letter we told you we could't do it."

MR. KAUFMAN: Your Honor, I understand the problem.

We would then just offer the letter starting with the words, "However."

THE COURT: It doesn't make sense that way.

The objection is sustained to 129-M.

The next letter chronologically was the witness' letter dated November 23rd.

The tax portion has nothing to do with this man's testimony.

MR. KAUFMAN: No. I don't offer that.

THE COURT: That has to be redacted.

And the Rio answer, the first paragraph has to be redacted because it goes to that tax portion.

I will let the rest of it in.

(Pause.)

THE COURT: Here is another one, he is referring to an attached letter which indicates that an office is going to be opened, but you don't have that letter.

Wherever you got this from, you should have the others.

What exhibit is that?

I will sustain the objection to Exhibit 129-K, and I will let in this one, as it will be redacted.

You can use L as redacted.

(In open court.)

XXX (Government's Exhibit No. 129-L was received in evidence.)

MR. KAUFMAN: If I may read those portions, your Honor.

THE COURT: Yes.

(Mr. Kaufman read from Government's Exhibit 129-L in evidence to the jury.)

BY MR. KAUFMAN:

Q I show you what has been marked Government's Exhibit 129-J, and ask if you can identify that (handing).

A Yes.

Q Did you receive that from Rio Rancho?

A Correct.

MR. KAUFMAN: The government offers 129-J.

MR. ARKIN: Objection. We all object.

THE COURT: Let me see it.

(Handing to the court.)

THE COURT: Objection overruled.

XX (Government's Exhibit No. 129-J was received in evidence.)

MR. KAUFMAN: May I read from part of this, your Honor?

THE COURT: Yes.

(Mr. Kaufman read from Government's Exhibit 129-J in evidence to the jury.)

Q Dr. Sporzynski, did Rio Rancho ever resell your land for you?

MR. ARKIN: Objection.

THE COURT: Overruled.

A They never did, and then --

THE COURT: Wait. That was all you were asked.

Q Did you go to another dinner in Cleveland in April of 1971?

A I did.

Q Tell us what happened.

A The dinner was held in the suburb of Cleveland --

MR. ARKIN: Your Honor, I object to this. I think Mr. Kaufman should make an offer of proof at the side bar if he intends to press it.

THE COURT: All right.

Why don't we adjourn for lunch.

See you at 2:00.

(The jury left the courtroom.)

THE COURT: Yes.

MR. ARKIN: I can make my objection more fully now, your Honor.

This man is about to be asked about a dinner which he sought to attend in Cleveland in 1971, where he had as his purpose going to the dinner and apparently disrupting the dinner because he was angry or upset or offended or whatever emotion governed his conduct at that time; he was met at the door by a salesman, one of the salesmen who was working for the broker which was giving that particular party, and the broker said to him in words or substance, "We don't want you around here, Buddy," so he wasn't allowed to attend the dinner.

It seems to me that is irrelevant to anything in this case.

The fact that he had a personal or unhappy confrontation with a salesman or that the salesman had a personal or unhappy confrontation with Mr. Sporzynski does not seem to me to be something which should be imported into this particular case.

THE COURT: What is the offer?

MR. KAUFMAN: If I may be heard, your Honor. It is not quite disruption.

Mr. Sporzynski --

THE COURT: I gather he was invited to the dinner.

MR. KAUFMAN: Well, not quite. As a frequent purchaser of land, he had been given schedules of all of Rio Rancho's dinners so he knew where they were going to be.

He went to this dinner. His salesman, Mr. Bernard, met him at the door and was happy to see him.

At that time Mr. Sporzkysni told Mr. Bernard that his intention at the dinner was to simply inform the people at the dinner that while it was very easy to buy Rio Rancho land, it was impossible to sell it.

At that point, Mr. Bernard told him he was not welcome at the dinner, he would not be allowed to enter and Mr. Sporzynski left.

I don't believe that is disruption, that is what Mr. Sporzynski wanted to tell the people at the dinner who were being -- who the company was trying to sell the land to, and that is what he was not allowed to tell the people.

The government believes that is perfectly proper proof.

THE COURT: I sustain the objection.

(Luncheon recess.)

AFTERNOON SESSION

2:15 P.M.

(In open court - jury present)

ADAM P. SPORZYNSKI, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. KAUFMAN:

Q Dr. Sporzynski, other than your communications with Rio Rancho Estates, did you make any other attempts to try to resell any of your land?

A Yes.

Q Tell us what you did.

A I contacted Ed Heinz Realty in Albuquerque first, and then he moved to Rio Rancho. I believe he used to work for Rio Rancho. And I listed my property. That is for three years. And I offer my property either to be sold on a cash basis or by installments.

And then I learned each year he would send me a blank form in which he stated that out of 400 prospective buyers --

THE COURT: Wait. The question was a simple question.

Did you give your land to Heinz to sell?

THE WITNESS: For three years in succession.

Q Did he sell your land?

A No, he didn't. And he --

MR. ARKIN: Objection, your Honor.

THE COURT: The question is did he. No. Stop.

Q I show you what has been marked 129-H for identification and ask you if you can identify that?

A Yes, I do.

Q Is this something you received from Heinz Realty?

A Correct.

MR. KAUFMAN: The government offers 129-H.

(Pause)

MR. ARKIN: This is hearsay, your Honor. I object to it.

THE COURT: Let me see it.

MR. KAUFMAN: If I may be heard on this, your Honor.

(Pause)

THE COURT: Do you have the letter?

MR. KAUFMAN: I don't believe so, your Honor.

THE COURT: Then objection sustained.

Q Did you contact any other realtors in Albuquerque in connection with trying to sell your land?

A Yes.

Q What other realtors did you contact?

A Sunland, I believe their name was Sunland. And the other one was again in Albuquerque. Hapsas or Hapsis.

Q Hopsas Realty?

A That's right.

Q I show you what has been marked 129-F for identification and ask if you can identify that.

A I do.

Q Is that a letter you wrote to Sunland?

A That's right.

Q I show you what has been marked 129-E for identification. Can you identify that?

A That's right.

Q These are in different years. Did you write to Sunland on more than one occasion?

A No -- I don't remember. This was my -- their letter.

Q Did you eventually list your land with Sunland Realty?

A These were the only two.

Q Did you list your land for resale with Sunland

Realty?

A No, I didn't.

MR. KAUFMAN: May this be marked 129-Z.

(Government Exhibit 129-Z marked for identification)

xxx

Q I show you what has been marked 129-Z for identification and ask you if you can identify that.

A I do.

Q Is that a letter that you sent?

A Correct.

Q To Hapsas Realty?

A Yes.

Q There is handwriting on the top of this letter, with a cross-out over it. Is that your handwriting?

A That's right.

Q Did you send this identical letter as well to Sunland Realty?

A Yes. To save myself typing.

Q In other words, this letter that was sent to Hapsas, the identical letter was also sent to Sunland?

A Correct.

end tla

Q I show you what has been marked 129-A for identification and ask you if you can identify that.

A That's right. I remember.

Q Is this a letter you received from Hapsis?

A Correct, yes.

MR. KAUFMAN: The government offers 129-Z, 129-E and 129-A.

MR. ARKIN: Your Honor, objection to all three of them owing of hearsay.

THE COURT: Let me see them.

(Pause.)

THE COURT: The objection to A and Z is overruled.

XXX (Government's Exhibits 129-A and Z were received in evidence.)

THE COURT: E is received.

XXX (Government's Exhibit 129-E was received in evidence.)

MR. KAUFMAN: Would you mark this one 129-AA.

XXX (Government's Exhibit 129-AA marked for identification.)

Q Dr. Sporzynski, I show you what has been marked Government's Exhibit 129-AA and ask you if you can identify that.

A Correct.

Q Is that your signature?

A Right.

Q Is that the letter that preceded the response to Heins, which is 129-H?

A That was on May 9th --

Q May 7th, I believe.

A May 7th. And this one, May 12th, yes.

MR. KAUFMAN: Your Honor, we have that letter that you asked for.

THE COURT: Show it to counsel.

(Pause.)

MR. ARKIN: We have the same objection, your Honor, to the one your Honor specifically sustained, as well as to 129-AA.

THE COURT: Let me see them.

(Pause.)

THE COURT: Now 129-H comes in, Mr. Devorkin, because it's obvious in answer to 129-AA. The objection is overruled.

XXX (Government's Exhibit 129-H was received in evidence.)

THE COURT: You were ahead of the game until they found AA.

MR. FLEMING: You called Mr. Arkin Mr. Devorkin, your Honor.

MR. ARKIN: I object.

THE COURT: Objection overruled.

MR. KAUFMAN: Your Honor, if I may read from this.

THE COURT: Yes.

(Mr. Kaufman read to the jury from Government's Exhibit 129-Z in evidence.)

(Mr. Kaufman read to the jury from Government's Exhibit 129-E in evidence.)

(Mr. Kaufman read to the jury from Government's Exhibit 129-A in evidence.)

(Mr. Kaufman read to the jury from Government's Exhibit 129-AA in evidence.)

(Mr. Kaufman read to the jury from Government's Exhibit 129-H in evidence.)

MR. FLEMING: Your Honor, may we have a limiting instruction with regard to the declarations?

THE COURT: What sort of limiting instructions do you want? This is a reply to his inquiry.

MR. FLEMING: I understand that, your Honor. With regard to the hearsay nature and truth and admissibility of what he said. There is no way of cross examination.

THE COURT: This ia a reply to the witness' inquiry. Whether they are true or not, that is what they said.

MR. FLEMING: That is what I meant, your Honor. They are not admitted for the truth of the declarations.

(Continued on next page.)

Q Dr. Sporzynski, have you been able to resell any of your land at Rio Rancho Estates?

A Not until today; nothing.

MR. KAUFMAN: No further questions, your Honor.

THE COURT: May I see counsel at the bench, please.

(At the side bar.)

THE COURT: During the luncheon recess I did some research on this 3500 question which you raised with regard to the witness presently on the stand.

I would like the record to show what has been turned over to you as 3500 material on this witness.

Do you have it?

MR. FLEMING: I can get it, your Honor.

(Pause.)

THE COURT: Go ahead.

MR. FLEMING: We have a questionnaire marked 3509, which I believe is the questionnaire -- yes, it is the questionnaire of the U.S. Attorney's office.

We have a letter dated September 20, 1975 from this witness to Patricia M. Hynes, Assistant U.S. Attorney.

THE COURT: How many pages is that?

MR. FLEMING: It is two pages.

THE COURT: With attachments?

MR. FLEMING: With attachments, yes, sir, included.

THE COURT: Is that a reply to a letter or is that just a volunteered letter?

MR. FLEMING: We don't have this, by the way, do we, the son's statement?

"Please find enclosed my son's statement regarding Rio Rancho Estates."

MR. KAUFMAN: The son's statement is in the back.

THE COURT: Is this letter in response to one that Ms. Hynes wrote to the witness?

MR. FLEMING: It is dated September 20, 1975.

The questionnaire is dated August 27, 1975.

THE COURT: Ms. Hynes, is this a follow-up to some letter you wrote him or is this something that the witness volunteered?

MS. HYNES: It appears from my looking at it it is additional information in addition to the questionnaire which he returned.

MR. FLEMING: We also have, your Honor, an FTC questionnaire.

THE COURT: Is it filled out?

MR. FLEMING: Which is filled out.

THE COURT: What is the date of that?

MR. FLEMING: I don't have that before me since it contained nothing.

THE COURT: Do you have any idea what the date of it is?

MR. KAUFMAN: Which questionnaire?

MR. FLEMING: The FTC?

MR. KAUFMAN: Is it this one?

MR. FLEMING: Yes.

THE COURT: What number is that?

MR. FLEMING: 3590-D.

THE COURT: Received by them December 22, 1975.

That is funny, because it has -- yes, it has a copy of the letter to Ms. Hynes attached to it.

All right.

On the basis of what you have shown me, I rule that the inability of the government to produce this statement or deposition or what have you is not prejudicial to the defendants and, therefore, I will not strike this gentleman's testimony.

(In open court.)

XXX CROSS EXAMINATION

BY MR. FLEMING:

Q Mr. Sporzynski, is it Mister or Doctor? How are you addressed?

A I'm a doctor, but they call me --

Q What do they call you?

A Adam or Doctor or Mister.

Q I won't call you Adam, I will call you Doctor.

A Sure.

Q Dr. Sporzynski, I want to show you Government's Exhibit 129-W (handing).

A Yes.

Q This is dated November 23, 1966?

A Correct.

Q Am I correct, that represents -- that is the contract pursuant to which you purchased your first acre of land at Rio Rancho?

A Correct, yes.

Q And that was on November 23, 1966?

A Right.

Q At a dinner party in the Cleveland area, is that right?

A Right, correct.

Q Then I want to show you what has been marked 129-S in evidence (handing).

This is January 26, 1967, about two months later, right?

A Correct.

Q And this is a purchase agreement for the purchase of four acres of Rio Rancho property, again, at a dinner party in the Cleveland area?

A Correct.

Q All right.

So that in November, 1966, you purchased one acre and then two months after, January 26, 1967, you purchased four more acres?

A Yes.

Q Now, you knew when you purchased this land that you had a right to cancel the purchase if you went down and looked at the property and didn't like it?

A Within six months.

Q Within six months?

A Right.

Q In other words, you knew with regard to both of these purchases, that if you went down within six months of the purchase, you looked at your property and didn't like the property for whatever reason, you could cancel and get your money back?

A Right.

Q Correct?

A Correct.

Q You also knew you were buying undeveloped land, raw land?

A Right.

Q And you knew that you had an exchange right should you decide to build in Rio Rancho?

A Within certain limits, yes.

Q You could exchange, as it reads here, "If when buyer is ready to build a home for himself utilities have not yet reached his site, seller," meaning Rio Rancho, "will exchange a full one half acre lot in area serviced by utilities for a same sized lot of buyer."

A But not the same price.

THE COURT: He didn't ask you that, did he?

THE WITNESS: Okay.

A Yes.

Q I am going to start calling you Adam.

You knew you could exchange --

A This is the first time I'm in court, so --

Q What?

A This is the first time I'm in court, so --

Q I understand.

You knew when you bought the land you could exchange one half acre for one half acre if utilities had not reached your lot when you decided to build?

A Right.

Q You knew you could also cancel?

A Right.

Q You went down to Rio Rancho to see whether you should cancel, is that correct?

A I didn't; my wife did.

Q Your wife went down?

A Yes.

Q That was with your authorization?

A Correct.

Q And you told her if she didn't like it to cancel?

A Correct.

MR. FLEMING: May I have this marked, please, Mr. Frezzo.

XX (Defendants Chester Carity and Daniel Friedman Exhibit FD marked for identification.)

Q I want to show you what has been marked FD for identification, and I will ask you if you recognize your wife's handwriting on that document (handing).

A Yes, I do.

MR. FLEMING: I offer it.

MR. KAUFMAN: Do you have a copy?

MR. FLEMING: No.

(Pause.)

MR. KAUFMAN: Your Honor, we have no objection just so long as they substitute the number onto a more legible copy.

XXX (Defendants Chester Carity and Daniel Friedman Exhibit FD received in evidence.)

THE COURT: Two sheets?

MR. FLEMING: They are both the same.

The prosecution wanted the tab put on the other one.

THE COURT: You can hardly read the other one.

What is the objection to the one that Mr. Fleming offered?

MR. KAUFMAN: Your Honor, you can't read the one that Mr. Fleming offered.

The other one is more legible.

The one you are holding up is the other one.

The one in your left hand is the one we have no objection to because it is more legible.

THE COURT: More legible?

The handwriting is -- the purchaser's comments are much more legible in the one in my left hand than the one on my right.

MR. KAUFMAN: That's right. We are just saying the exhibit tab should be transferred onto the more legible copy.

THE COURT: Okay, transfer it.

You have no objection to this, Mr. Fleming, putting the more legible on in?

MR. FLEMING: Not at all.

(Continued on next page.)

2b pm

Q Dr. Sporzynski, I want to show you FD in evidence (handing).

It is dated April 22, 1967.

A Correct.

Q And down here, can you read your wife's signature? I can't pronounce the first name.

A Jadwiga Hahn, middle name, maiden name, and the last name is Sporzynski, M.D.

Q Am I correct that this reads -- first of all, it has the name of the buyer Mr. and Mrs. Adam P. Sporzynski with your address, is that correct?

A Right.

Q And it has the date the purchase agreement signed, January 26, 1967, and November 23, 1966, is that correct?

A Yes.

Q So that would cover the two purchases of a totel of five acres?

A Correct.

Q And there is printed here, "I have inspected my property and am satisfied with the homesite I have purchased"; is that correct?

A Yes.

Q And then it says, "Purchaser's comments," in print, and then there is written, "The development of the city" -- this is your wife's handwriting, am I correct?

A Correct.

Q "The development of the city is impressive. We are interested in the land and profit. I think we have good location of our lots, and I would like to see the Rio Rancho development in three years from now."

A Correct.

Q Have I read correctly?

A Right.

Q And that was signed by your wife?

A Yes.

Q And written by your wife?

A Correct.

Q After her inspection?

A Yes.

Q And she received a $200 travel allowance?

A No. She paid and she is due -- the money is due to her when we pay it up.

Q Right. This travel allowance, at the end of your payments, it is credited against your last payment?

A That's correct.

Q Did Mrs. Sporzynski go down on a tour?

A Yes.

Q And how long did she stay, do you recall?

A I hate to say. I believe two or three days.

The weather was bad. They were held up in the Sandia Mountain and she lost a few hours.

Q Lost a few hours?

A But she didn't stay more than two days, if I remember right.

Q All right. And she came back to Cleveland?

A Right.

Q She talked to you about the property?

A She did.

Q She told you she liked it and she had accepted it?

A The way it was she did.

Q All right.

A Of course, this was undeveloped completely.

Q She had seen it? She had told you she had seen it?

A Yes.

Q Did she have a nice time in Albuquerque?

A She was wined and dined for $200, which we eventually received back.

Q So she had a nice time?

A Well, any time you go from -- what was the amount of this? We had bad weather here.

Q Where, in Cleveland?

A Yes.

Q Now I show you 129-A (handing).

Now, our Exhibit FD in evidence is dated April 22, 1967, and now we are up to April 30, 1967, eight days later, is that right?

A Yes, it looks that way.

Q And you purchased some more property eight days after Mrs. Sporzynski had inspected her land and seen Rio Rancho down in Albuquerque, is that correct?

A Correct, yes.

Q Tell me, what was that -- was that a commercial property that you purchased?

A Yes.

Q And do you recall where that was -- was that purchased in Albuquerque or in Cleveland, do you recall?

A Everything was bought in Cleveland.

Q Everything was bought in Cleveland?

A After my attending the dinner.

Q So Mrs. Sporzynski took the trip, went down, saw the place, made the notation which appears on the document dated April 22, 1967, came back, spoke to you and eight days later you purchased some commercial property?

A This time commercial.

Q This time commercial?

A Yes.

Q So I take it when she spoke to you when she returned from Albuquerque, since you went out and bought some commercial property eight days later, she must have been satisfied with what she saw down in Rio Rancho.

A Well, what she saw she was satisfied at that time.

Q Right, at that time.

MR. FLEMING: May I have this marked, Mr. Frezzo, please.

(Defendants Chester Carity and Daniel Friedman Exhibit FE marked for identification)

xxx

MR. FLEMING: This, too, please (handing).

(Defendants Chester Carity and Daniel Friedman Exhibit FF marked for identification)

xxx

Q Now I want to show you Defendants Exhibit FE for identification (handing).

Do you recognize a signature on that document?

A Yes, I do.

Q Whose signature is that?

A That's mine.

MR. FLEMING: I offer it.

MR. KAUFMAN: No objection.

(Defendants Chester Carity and Daniel Friedman Exhibit FE received in evidence)

xxx

Q Doctor, am I correct that you executed FE, which is now in evidence, on April 30, 1967 at the dinner party where you purchased the commercial property after your wife came back from Rio Rancho?

A What is FE?

Q That is the exhibit number.

A I see.

Q Did you sign that on April 30, 1967, when, eight days after your wife had visited Rio Rancho, you purchased commercial property in Cleveland?

A Yes. This is my signature.

Q Would you read along with me.

"The undersigned is about to purchase a lot or lots at Rio Rancho Estates, a subdivision near Albuquerque, New Mexico, which is zoned for commercial usage. The undersigned understands at the present time there are no homes in the area of such lot or lots and understands that there are no assurances as to when development may reach this vicinity.

"Dated April 30, 1967, signature," and that is your signature?

A That's right.

Q I have read correctly?

A You read correctly.

Q I show you FF for identification (handing).

Do you recognize that?

A I do.

The only thing is there is no date on there.

Q No date?

A No.

Q When did you first see it?

A Several years ago. I don't remember when.

There was never -- it was never dated.

Q Was that given to you personally or did your son receive it or did your wife receive it?

A No, I received it myself. We live with my wife, so we both received it.

Q Was it delivered to your wife when she took the trip to Rio Rancho or in the mail?

A No, no. This was delivered way -- a few years later.

Q Do the red marks indicate approximately where your properties are?

A That's correct.

MR. FLEMING: I offer it.

MR. KAUFMAN: May I have a few questions on voir dire, your Honor?

THE COURT: Yes.

(Continued on next page)

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T3A p,m

VOIR DIRE EXAMINATION

XX

BY MR. KAUFMAN:

Q Dr. Sporzynski, how did you receive this? In person or in the mail?

A In the mail in Cleveland. The year was never stated. You don't find the year of this.

Q Do you know who made these red markings on it?

A I did. To show my property, roughly. Unit 10, Unit 9 -- for some reason I didn't mark -- oh, yes, Unit 10, Unit 15 commercial, Unit 17 where I was to ride horses. They are my marking.

Q How did you do where in the unit to make the markings?

A I have maps, and I gave them to you. They are maps of each unit, and the block number and the lot.

Q Are those the plat maps?

A Plat maps, yes.

Q Do those plat maps show the actual location of your property?

A Correct. Yes. You have those copies. They are rought, of course.

MR. KAUFMAN: We would object to FF and suggest the use of the plat maps would be more accurate.

THE COURT: He says he did it.

THE WITNESS: They are rough markers.

MR. KAUFMAN: I think if your Honor looks at the exhibit, they are a rough exhibit.

MR. FLEMING: That is all I am offering them for, are rough estimates, your Honor.

THE COURT: That is all they are. The witness said he did it, and it comes in.

Q Do you know who wrote in the blank handwriting?

A No, this is the way I received it. Somebody from Rio Rancho. Except for the marks, I didn't do a thing.

MR. KAUFMAN: Your Honor, we object to any handwriting that is not this witness'.

MR. FLEMING: I have no problem with that, your Honor. I would not press anything that is not this witness'.

xxx (Defendants Chester Carity and Daniel Friedman Exhibit FF received in evidence)

MR. FLEMING: May I just bend this back at this time, and show it to the witness.

BY MR. FLEMING:

Q These red marks, I take it, doctor, indicate the approximate location of the properties you own?

A Correct.

Q Do you know what the grey area represents?

A According to the --

Q Well, no; all right. You don't know.

A I don't know.

Q And then on September 11, 1968 you purchased three more acres, is that right?

A Correct. The reason --

Q No, the answer is yes, is that right?

A Correct. I want to explain, if I may.

Q On March 14, 1969 you purchased two more acres, is that right?

A This was where the horse riding was supposed to be.

Q But the answer is you did purchase two more acres?

A I did, yes.

Q Did you testify thatyou were told by salesmen that the company was going to set up a resale office?

A Correct.

Q Do you recall receiving a questionnaire from the prosecutor in this case, the United States Attorney's office?

A Yes.

Q That was in August of 1975 or thereabouts, do you recall?

A Probably, yes.

Q Would that be about right?

A About right, yes.

Q That consisted of a series of questions?

A Correct.

Q With blanks, is that right?

A Correct.

Q Do you recall, that questionnaire contained this question, to which you gave the following answer:

"Q When you purchased the land did your salesman or anyone from the company say anything about resale?

And your answer: "Not sure."

A The same answer I can give now.

Q You are not sure?

A But the -- could you read the question once again?

Q Yes.

Were you asked this question on the questionnaire and did you give this answer:

"When you purchased the land did your salesman or anyone from the company say anything about resale?"

And then there is a parenthetical, "Answer: Yes, no, or not sure." And your answer printed in, "Not sure".

A Since I bought the property four different times --

THE COURT: Wait a second. You are only being asked, did you answer that question the way it is being read to you.

THE WITNESS: Not sure. I cannot answer yes or no.

Q And then Question 8:

"Were you told that the company would set up a resale office?"

Answer: Yes, no, or not sure.

And your answer, "Yes, at a later date."

A Correct.

Q Those were answers you gave in August of 1975, is that correct?

A Yes, that's right.

Q You testified that you are a chemical engineer, or were until you retired.

A Yes.

Q And you are presently acting as a consultant to two corporations?

A Correct.

Q Am I correct that Mrs. Sporzynski is also trained professionally?

A She is a medical doctor.

Q Is she not a psychiatrist?

A Psychiatrist.

Q She is trained professionally?

A Yes.

Q College education?

A College education and passed all exams.

Q Substantial graduate school, is that correct?

A Oh, yes.

Q And she is presently a practicing psychiatrist?

A Correct. In Cleveland.

Q While you were working as a chemical engineer, Mrs. Sporzynski was practicing as a psychiatrist in Cleveland?

A No. She didn't get her Ohio license until a few years ago.

Q In any event, for the past few years she has been practicing in Cleveland?

A Correct.

Q You testified you purchased the land for investment in Rio Rancho, did you not?

A I did.

Q Did you not write to Rio Rancho and ask of them whether your wife could qualify as a psychiatrist in New Mexico?

A I did.

Q Was that because you had invested in the land for investment?

A And we are considering also maybe moving down to warmer climate, because of my wife's arthritis problems.

Q How long has your wife had arthritis? I'm sorry to inquire, but I must.

A It started -- again, I am going back -- about the first symptoms -- this is not arthritis, this is osteoarthritis, about eight years ago. Again, I am hesitant to say definitely. It's creeping.

Q Could your wife's arthritis have begun to develop before you purchased any land at Rio Rancho?

A I cannot answer that question.

Q Is it possible that it did?

A I cannot answer that question.

Q You recieve an invitation to go to a dinner in Cleveland area in 1966, isn't that right?

A Yes.

Q And you went to that dinner knowing that the subject of the dinner was land in New Mexico?

A Correct.

Q Tell me, did you and your wife go to a dinner together?

A Once or twice. The first time, yes.

Q Isn't it a fact that you went to that dinner to see whether you might not like to live in New Mexico?

A Maybe.

Q Because of your wife's health and other reasons?

A At that time, this was 1966. I said eight years ago. So she couldn't have any symptoms, or you wouldn't even consider.

Q Isn't it true when you went to the first dinner one of your conversations was whether you and your wife would like to move down to New Mexico where it was warmer?

A My wife would think about Florida more. We never considered New Mexico.

Q You considered moving down to where it was warmer than Cleveland?

A That's right.

Q As a matter of fact, you invested in land in Florida, did you not?

A She did. I didn't.

Q In fact, your wife has invested in Marco Island in Florida?

A Correct.

Q And not only Marco Island, but she has also invested in Florida land in Palm Beach West.

A Correct.

Q That is the Deltona Corporation?

A Yes.

Q In addition to the investment in the New Mexico land your wife has also invested in Florida land?

A Correction. My wife invested only $400 in New Mexico land. The rest of $25,000 or more, I paid for.

Q Do you and your wife file a joint income tax return?

A Yes. Joint, yes.

Q You do, right?

A Yes.

Q You took deductions, you took the interest payments on your land you took as deductions on your income tax return?

A Yes.

Q Do you have a joint bank account?

A Yes.

Q Did you and your wife sign those purchase agreements for Rio Rancho?

A Not all of them. Only two of them,I believe.

Q Did you sign the purchase agreement for the land?

A No.

Q In any event, you take your wife and yours together, you invested in Rio Rancho land and you invested in Florida land in two different areas in Florida?

A No. I invested in Rio Rancho. My wife invested four or $500. And the rest of the payments, as I said, I was making myself.

Q So your wife made all the investments in Florida?

A Correct.

Q Out of her own money, is that correct?

A That's correct.

Q That was two separate investments in Florida?

A Three.

Q Marco Island, Palm Beach West, and where else?

A Rotundo West, which is under investigation now.

Q You are not trying to get your money back, are you? Answer that yes or no.

A Yes. Very much so.

Q Do you know a man named David J. Heil?

A H-e --

Q i-l.

A Heil?

Q Yes.

A The name sounds familiar. If you could tell me, is he involved with the --

Q No, I will ask you.

A No, I don't know.

Q He is not involved with Deltona. Did you write a letter to David J. Heil, H-e-i-l?

A A resident of Rio Rancho? Heil? I have written so many letters to different -- I don't remember.

Q Do you recall?

A I don't recall.

Q Do you recall writing a letter to a David J. Heil inquiring about the value of your investment down in Rio Rancho?

A I don't recall.

Q Do you recall Mr. Heil writing back and telling you in March --

MR. KAUFMAN: Objection, your Honor.

THE COURT: Show it to him. Let him read it. He has no recollection of writing one.

A You see --

THE COURT: Wait.

(Defendants Chester Carity and Daniel Friedman Exhibit FG marked for identification)

Q Would you look at FG for identification, Dr. Sporzynski.

A Yes.

Q Just look at it, read it to yourself, and I'd like to know if that refreshes your recollection that you wrote to Mr. David J. Heil at Rio Rancho.

A Apparently I did. But I --

Q Does it refresh your recollection that you wrote to him? He is a property owner down there.

MR. KAUFMAN: Your Honor, I would object to Mr. Fleming's questioning in which he supplies information.

THE COURT: First the witness denied he recalls. Now he asked whether this letter would refresh it.

MR. KAUFMAN: I have no objection to his showing it to him. I do object to his characterizing who Mr. Heil is. I believe that's in the record.

Q In fact, have you not over the past year written several letters to several home owners in Rio Rancho itself?

A True. Oh, yes, I remember now the name.

Q You have over the past year written letters to people who own homes in Rio Rancho, is that right?

A Correct, yes.

Q Did you not write a letter to a man named David J. Heil, whom you heard owned a home in Rio Rancho?

A Now I remember the name, sure.

Q Right?

A Yes, sir.

Q And you asked him what he thought your property was worth, didn't you?

A Yes.

MR. KAUFMAN: Objection, your Honor.

THE COURT: Overruled. The witness says yes.

MR. KAUFMAN: If he is speaking from the letter, the letter ought to be offered.

THE COURT: He is asking the witness did he say it. This is cross examination.

Q You were asking Mr.Heil's opinion of what your land might be worth, is that right?

A Right, yes.

Q Didn't he tell you that the area was growing, that in about five years you might realize on your investment?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Overruled.

A He suggested that I hold on to it. But he didn't have any help. That is the reason I wrote a letter to him. Most people didn't even answer. I wrote him letters.

MR. FLEMING: Move to strike that, if your Honor please.

THE COURT: Sustained. Strike it.

Q Did Mr. Heiltell you he was going to build a house on some of his property and sell the house?

A Correct.

Q Did he tell you if you would hang on, in three years you might realize on your investment?

Q Isn't it a fact, Dr. Sporzynski, that you were willing to wait five or ten years to realize on your investment?

A No.

Q Isn't it a fact that you were thinking of assigning your property to your sons?

A I cannot assign bucause this would be against Ohio inheritance tax.

Q That would cause you inheritance tax problems if your --

A No, my wife immediately after my death gets one-third of my property, I believe, or half of my property. And I have it all in my last will and testament.

Q Have you written off your Rio Rancho property on your tax return?

A Written off?

Q Yes.

A What do you mean by this?

Q Have you taken a deduction?

A No.

Q Do you recall being interviewed by Mr. Paul Mahon?

A Paul Mahon?

Q Yes.

A Is he one of the owners of the property?

Q No. Do you recall on June 9, 1976, being interviewed by a husky fellow who said he represented Mr. Fleming?

A Paul Mahon? What's his name?

Q Paul Mahon, M-a-h-o-n.

A Yes, Mahon, right.

Q He spoke to you about your investment in Rio Rancho?

A Correct.

Q Do you recall telling Mr. Mahon that you can afford to wait five or even ten years if necessary, as your sons will get the benefit?

A That was a statement which --

Q Did you tell Mr. Mahon that?

A I don't remember. Has he any proof of that, written?

MR. FLEMING: I don't have to answer that, do I, Judge?

THE WITNESS: I told you, I want to sell the property. I held it for ten years.

THE COURT: Wait a second. Don't volunteer statements, please.

THE WITNESS: Okay.

Q Have friends of yours spoken to you about Rio Rancho; yes or no?

A Only one.

Q Has any friend expressed an interest in buying property at Rio Rancho?

A No.

Q You are sure of that?

A As far as I remember, yes.

XXX (Defendants Chester Carity and Daniel Friedman Exhibit FH marked for identification.)

Q Did you ever write a letter to anyone saying that friends of yours were interested in buying Rio Rancho property?

A I don't remember that.

Q Let me show you FH for identification. Do you remember that?

(Pause.)

A Oh, yes. I remember, but nothing came out of it. But the answer is --

Q The answer is yes?

A Yes. I remember that.

Q That refreshes your recollection. Am I correct that some friends of yours, plural, were interested in buying Rio Rancho property?

A This was a telephone call from somebody, yes.

Q Is the answer yes?

A Not friend. Acquaintance.

MR. FLEMING: I offer this letter.

THE WITNESS: Your Honor, may I add to it?

THE COURT: No.

MR. KAUFMAN: No objection.

XX (Defendants Chester Carity and Daniel Friedman Exhibit FH was received in evidence.)

Q This is a letter addressed to Rio Rancho, John Musgrove, account representative?

A Yes.

Q It's dated March 28, 1975, is that right?

A Yes.

Q In the second paragraph, you wrote -- you signed this letter, did you not?

A Yes, I did.

Q "Very recently I was approached by some friends interested in acquiring property in Rio Rancho. In one case it was a question of buying commercial property in order to open a car repair shop. In two other cases it was a question of buying residential property either for retirement or to acquire more property. All these people are planning to visit the area early in the summer."

Have I read correctly?

A Yes.

Q I take it, this was in March of 1975, that when this friend or these friends asked you about Rio Rancho, you told them it was a terrible place, did you not?

A I told them the truth.

Q Did you tell them, yes or no, it was a terrible place?

A Yes, because --

Q You told them it was a terrible place, is that right?

A Yes, because I couldn't sell it.

Q You told them it was a terrible place and then you wrote this letter to Rio Rancho about these people, is that correct?

A Apparently, yes.

Q Who is Mr. Galt? Do you remember that name?

A He is one of the people who bought property in Rio Rancho and I found his name in the Rio Rancho Road Runner. It's the same man or similar man like the Mr. -- I don't remember what the name was.

Q What is TLF Realty Corporation?

A I have to read the letter to -- offhand, I don't remember.

Rio Rancho, New Mexico?

A Yes.

Q And said thatyou were considering transferring your ownership rights to your sons?

A Correct.

Q That was 1961?

A A few months after I retired.

Q Am I correct that on March 13, 1973 you wrote to Mrs. Newmann, is that correct?

A Yes.

Q You said I would appreciate it if you would answer -- well, you thanked her first for discussing the premiums on your contract, right?

A Yes.

Q That meant you had reduced the payments you would make monthly?

A Yes.

Q And then it says "I would appreciate it if you would answer a few questions regarding my property at Rio Rancho. Paragraph one: I learned recently from Mr. Dick Galt of the TLF Realty Corporation."

A Yes.

Q I guess it's Dick, D-i-c-k, Galt?

A Yes.

MR. FLEMING: May we have these two marked, please?

(Defendants Chester Carity and Daniel Friedman Exhibits FI and FJ marked for identification.)

XXXX

MR. FLEMING: May I have just another minute, your Honor.

Q I want to show you what's been marked FI for identification. Do you recognize that?

A Yes. Here --

Q No, do you recognize it?

A Yes. That is my signature.

Q Is that a letter you wrote?

A Yes.

Q Let me show you FJ for identification, is that a letter you wrote?

A That's right. That was when I returned.

MR. FLEMING: Your Honor, these are marked. But I would get clean copies and mark the back of them.

(Pause.)

MR. KAUFMAN: No objection.

XXX

(Defendants Chester Carity and Daniel Friedman Exhibit FI was received in evidence.)

Q FJ, am I correct that in June of 1971 you wrote to Marianne Newman, director of customer relations at

Q Is LTF Realty Corporation the Rio Rancho broker in Cleveland?

A Not in Cleveland. Cincinnati -- somewhere in Ohio, or Columbus.

Q And Dick Galt works --

A Worked for it and then it folded up.

Q And Galt told you, am I in paragraph two, according to Mr. Galt, Rio Rancho may establish a resale office after all the lots are sold, correct?

A Yes.

Q That's what he told you in or about March of 1973?

A Yes.

Q And you wrote a letter to Mrs. Newman, right?

A Yes.

Q Am I correct that at no place in that letter do you say that any salesman ever told you anything to the contrary of what Mr. Galt told you?

A I didn't have to.

Q In 1967 after you had purchased five residential acres and your commercial property, am I correct that in July of 1967, you requested a five month moratorium on payments because you were sellin gyour house in Ann Arbor, Michigan?

A Correct.

Q How much did you pay for your house in Ann Arbor, Michigan?

A I paid about $27,000. After my wife died and I remarried I wanted to sell it --

(Continued on next page.)

Q After your wife what?

A Died and I remarried, I had a hell of a time selling the house, so I was really tight and my youngest -- my boys were still in college.

Q You paid $27,000 for your house in Ann Arbor?

A Right.

Q And you were having difficulty selling it?

A Yes.

Q And you asked for a moratorium on payments at Rio Rancho?

A Correct.

Q And they gave you a 60-day moratorium, isn't that right?

A I don't remember how many days, but they did, 60 days.

Q Then on October 19, 1967, they reduced your monthly payments for the next two months, isn't that right?

A Apparently.

Q Did you sell your house in Ann Arbor?

A On the land contract.

Q Excuse me?

A On the land contract, land contract.

Q Did you --

A I sold it on the land contract, which means I didn't get the money right away.

Q Well, what was the sales price of your house in Ann Arbor?

A When I was selling it?

Q When you -- did you sell it?

A I sell it on the land contract.

Q And what price didyou sell it for?

A 24,000.

Q What?

A 24,000.

Q 24,000, so you lost money on that?

A I did.

Q And am I correct that on June 16, 1969, Rio Rancho reduced your monthly payments for unit 9, block 31, lot 22?

A Yes.

Q And then on February 19, 1970, Rio Rancho reduced your monthly payments on three of your accounts?

A Apparently, yes.

Q And that was all at your request, was it not?

A Yes.

Q Have you invested in the stock market?

A I was -- yes, I had TRW. I worked for TRW.

Q You bought TRW common stock?

A Yes, yes.

Q Was that your only common stock investment?

A My wife bought GE stock, common stock.

Q General Electric?

A General Electric, yes, sir.

Q ANy other common stock investments?

A Not in 1967, as far as I remember.

Q No, over the last ten years, have you invested?

A Yes.

I sold my TRW -- TRW stock, I sold part of General Electric stock with my wife.

Q That was your wife's stock?

A This was joint, joint stock.

And then after I retired, since I lost 100 per cent of the stock in motel in Ohio, in Columbus, Ohio, I couldn't touch it, I paid 3600 for it, I sold TRW and I sold Belco Petroleum --

Q What?

A Belco, B-e-l-c-o.

Q Belco Petroleum?

A Right. And I bought American Hess.

Q Amarada Hess?

A Amarada Hess, yes.

Q A big oil company?

A A big oil company.

So that all the stock I have --

Q And you invested $3600 in a motel in Columbus, did you say?

A Columbus.

Q You lost all that?

A All of that. The stock is not on the market.

Q When did you make that investment?

A When I was still working at TRW, when I still employed.

Q Was that a cash investment?

A Was cash investment, yes.

MR. FLEMING: Okay. I have nothing further.

THE COURT: We will have a recess.

(Recess.)

THE COURT: Go ahead.

CROSS EXAMINATION

BY MR. ARKIN:

Q Dr. Sporzynski, when was it that you sold your house in Ann Arbor, Michigan?

A Either '61 or '62. I don't remember. It was going on for a long time. 1961 or 1962.

Q Did you testify just a few minutes ago that you required a moratorium because you had some difficulty in selling your house?

A The problem was, first of all, finding the buyer, which means I had to --

Q I am asking you about -- you know what a moratorium is?

A Yes.

Q The moratorium you asked from Rio Rancho?

A Yes.

Q And do you recall what date it was that you asked for that moratorium?

You don't recall? Was it sometime in 1969?

A '69? No.

Q Excuse me. Was it 1967? Excuse me.

A I may ask for -- twice for the moratorium. I don't remember.

Q But do you recall asking for the moratorium in 1967 asking for a five-month moratorium?

A Apparently this was the case.

Q That's what you did in 1967, am I right, sir?

A Apparently, yes.

Q And you did so on the basis that you were having difficulty selling your house?

A Then whatever I just said was wrong, because

I had problem with the fellow who bought the house didn't pay taxes, so my problem was taxes.

Q Excuse me.

The problem was not selling your house, is that right? It was not selling your house?

A Apparently not. I was wrong on that.

Q You sold your house back in 1961?

A 1961.

(Continued on next page.)

pm

Q And that was after, if you will pardon me, that was after your first wife died?

A She died in 1959.

Q That was your first wife?

A Right.

Q And then you later married the lady who is a psychiatrist and a doctor?

A Well, after a while, after a long time, yes.

Q Yes, I understand that.

A Yes.

Q But it was in 1967 that you were having some difficulty with the buyer of your first house?

A With the fellow who bought the house. He resold the house without saying a booh and sold it to a fellow who didn't pay taxes, and then I had a hell of a time scrounging enough money to pay the taxes for the man who bought the house didn't pay taxes.

Q You had sold the house, hadn't you?

A Yes.

Q It was no longer your house?

A Yes. But he sold it on a land contract.

Do you know what land contract is?

Only few states have land contracts.

So he didn't pay taxes. I had the house --

Q No, no, Dr. Sporzynski, please, I will ask you some questions.

A Yes.

Q I have established I am not a real estate lawyer so far.

Did you still have an interest in the house in Ann Arbor?

A Not any more, except for the fact I had to pay taxes.

Q Did you have a mortgage on the house?

A Sure.

Q They were paying you monthly?

A They were paying me monthly?

Q And then there came a point when taxes weren't paid and the tax authorities were going to take away the house, was that the problem?

A That's correct, yes.

Q So to protect your mortgage you had to pay taxes, is that correct?

A That's right.

Q I see.

And that was in 1967?

A Apparently, yes.

Q Are you still receiving monies on that mortgage?

A No. That house, the man forfeited the house and I sold it again.

Q What did you sell it for the second time?

A I bought the house originally for $27,000, I sold it for twenty-three, if I remember rightly or twenty-four.

Q What did you sell it for the second time?

A Twenty-three or twenty-four.

Q What did you sell it for the first time?

A The same, about the same amount.

Q So you sold it for twenty-three or twenty-four two times?

A Correct, yes.

Yes, but the money didn't belong -- okay.

Q Did you now have a mortgage on the house the second time?

THE COURT: Wait a second. He didn't get $46,000 for selling this.

MR. ARKIN: No, I am not saying he did, your Honor.

THE COURT: Well, you are giving the impression that he did.

A I didn't sell it twice, I sold it and the man didn't pay taxes so he forfeited the house and he lived --

Q He forfeited the house, right?

A Right.

Q Had he paid you a down payment on the house when he bought it from you, the first fellow?

A I didn't get you.

Q Did he pay you a down payment?

A Yes, very small.

Q How much was that?

MR. KAUFMAN: Your Honor, I object to this, this whole line.

THE COURT: Overruled.

A I don't want to give you a wrong answer.

Very small, like, $1500.

Again, I hate to tell --

Q All right.

You recieved about $1500 in about 1961, am I correct?

A Somethine like this.

First of all, I rented the house because I couldn't find a buyer. I was living away from Ohio.

Q Wait. I am just asking you, not about renting, about selling it.

You got a down payment of a certain amount of money, right?

A Right.

Q Then you received a monthly amount --

A Of $1500 -- $150 a month.

Q And part of that was interest and part of that was paying off the principal, right?

A Correct, that's right.

Q And you received that every month for six years?

A Every month.

Q Is that right?

A Yes, but first from --

Q Now, just follow me, sir.

A Okay.

Q This first man, you say, forfeited, is that right?

A No.

The first man sold without telling -- saying a boo to me. He sold it to another buyer on a land contract.

Q And did the other buyer pay you anything at all?

A The other buyer was -- I didn't know he bought the house.

I had to go to Ann Arbor, two years later I found out he bought the house on land contract and the second buyer was paying the first buyer and the first buyer was sending the money to me, but the second buyer didn't pay any taxes, period.

Q I see.

When the second buyer forfeited, the first buyer stopped sending money to you, is that right?

A That's right.

Q Did the first buyer try to pay the taxes? Do you know whether he did or not?

A Yes, because I had no problems for the first two years or so. Only when he sold the house, then I had the problems.

Q When the second buyer forfeited, did you give back any money to anybody?

A There was very little money --

Q Did you give back the $1500 down payment?

A I cannot answer those questions. I would have to look through my -- that was so many years ago, I --

end t

Q Then you sold your house a second time. When was that?

A You have to look through my records. I don't wan to give you the information which may be wrong.

Q But you received, let's say about $1500 for a down payment in 1961, right?

A Probably, yes.

Q And $150 a month twelve months a year for six years, is that correct?

A No. At first I was renting my house for about a year to two different persons.

Q When did you finally sell the house?

A I cannot answer the question because I don't remember. I remember one thing: I got eventually $20,000 cash after selling the house. But the date of sale, I cannot tell you.

Q $20,000 cash you got was when, the second or the first time?

A Second time.

Q The first time you got payments for a period of several years, didn't you?

A Only probably a year, maybe year and a half. Because at that time the first buyer sold the house to the second buyer. I had to pay $2,000 for delinquest taxes.

Q You only got $150 a month for one or two years and then a second buyer came in, is that right?

A I don't know it. I was receiving my $150 a month from the first buyer.

Q For how long did the first buyer give you the $150 a month?

A I cannot answer it.

Q Wouldn't that have been up until 1967 when you say you had some troubles?

A I cannot answer it. I don't remember.

Q Would it have been for more than four years?

A I cannot answer it. I don't remember.

Q You say that your wife attended one dinner party with you of the ten you attended?

A One or two.

Q And you attended a total of ten?

A Right. About ten.

Q And you purchased property at three separate dinner parties?

A Four.

Q Four separate dinner parties. Two times you purchased property in both yours and your wife's name; is that right?

A Correct.

Q And the other time was in your name alone?

A Correct.

Q That is because you wanted to have some independence from your wife?

A Not necessarily, but my wife lost interest because she was interested in Florida. And of course you couldn't --

Q You wanted to have, didn't you testify, you wanted to have something for your own retirement even though you were married?

A Correct, yes.

Q And the two times you purchased land together with your wife were at dinner parties?

A They were all dinner parties.

Q Was your wife present with you at the dinner parties where both she and you bought property?

A According to the records, yes.

Q Could you have taken home the contract and had her sign it there?

A No. Now I remember. Only once a Rio Rancho salesman, I believe his name was Silverman, came to my house, and I believe I signed, but this is something I don't remember.

Q So you might not have bought some of the property at the dinner party, is that right?

A At least three I bought at the dinner party.

Q And the fourth you bought at your home?

A Could be, I don't remember.

Q You could have taken the contract and had your wife sign it there?

A No.

Q The salesman came to your house once?

A I'm not sure. I believe I bought it.

Q You don't recollect?

A I don't recollect. This was fifteen years ago.

Q You say that you bought your property in 1967-1968 and you had a plan to sell an acre a year after you retired four years later?

A Yes.

Q So you intended to start selling you ten acres plus your commercial property about three or four years after you bought it, isn't that so?

A One at a time, yes.

Q Yes, one at a time.

Q But commencing a few years after you bought it.

A Yes. Provided the price was good.

Q You didn't pay cash for it when you bought it, did you?

A Yes, I did.

Q You paid all cash?

A No. Three acres in Unit 10, after I sold my house.

Q But the others you paid off, didn't you?

A Only one. Only one I paid off. The rest I am still paying for.

Q The others that you bought, you took on time and terms?

A That's right.

Q And you were paying monthly?

A Right.

Q And you testified before as to how much you had to pay each month?

A Right.

Q Towards the property which you own.

A Right.

Q And you knew that you were not going to pay off the property or complete paying for the property for seven years, am I correct in that?

A No, because I was paying much more. Since I had money after selling the house, I paid much more than

I could have.

Q Do you know what the terms were?

A Yes.

Q The terms.

A 5-3/4 percent interest.

Q For how many months?

A The interest is the same all the time.

Q What was the duration of the contract? How long was the contract?

A If I paid less than -- I was paying almost $300.

Q How many months were you going to have to pay, do you recall that?

A You have to calculate it. I can't do it without a calculator.

Q Don't you recall what the duration of your contract was?

A It doesn't say. I don't think it does. Depends on the payments.

Q Do you know the number of payments? Do you have any idea what the number of payments were?

A Mr. Kaufman has a statement from Rio Rancho how many payments I made until December last year.

Q Showing you 129-V, does that refresh your recollection?

A This is cash. That is the only one which I paid cash.

Q And the other one here, is that cash too?

A No, the rest were installments.

Q Does this tell you how many particular installments there were going to be?

A No.

Q Do you know what this number refers to?

A Amount. $77 a month.

Q And the number of payments, you were never told the number of payments at all?

A You have to be a mathematician to do it or use a calculator.

Q You are an engineer?

A Yes, but I am not an actuary. You have to be an actuary to do it.

Q As an engineer, you never worked with numbers --

THE COURT: Come on, Mr. Arkin. It's five after four. Let's get through.

A I am a chemist, not a mathematician.

Q Didn't you know that you would not have completed paying for your property by three years -- for some of your property by three years after you bought it?

A Not three years, but five years. Every year they would send me a special plan, if pay ten monthly payments ahead of time, you get two months for free. I did use it once.

Q You expected within three years after you bought the property, or four years after you bought the property, that you would be able to sell it at a profit, is that correct?

A Yes, that's right.

Q And you thought you would be able to sell it at enough of a profit to assist your retirement, is that correct?

A One at a time, yes. That's right.

Q What kind of profit were you expecting after three or four years?

A According to one of the letters, it says the price --

Q No, how much profit were you expecting after three or four years?

A First of all, I wouldn't expect five years, minimal, because I will be retired. About, with the commission and everything else, about at least twenty percent. Between twenty and fifty percent according to what your salesmen were telling us.

Q That is what you expected at that time?

A That's right, yes. Net.

Q Net to you?

A Net to me.

Q You never visited your land down in Rio Rancho?

A My wife was there once.

Q And she went down there and reported back to you?

A Right, yes.

Q You have an attorney, don't you?

A I do.

Q And you had an attorney for many years.

A Correct.

Q Mr. Sayjak?

A Correct.

Q He is located in Cleveland?

A Professor Avenue, Cleveland, Ohio.

Q Your lawyer is in Cleveland, isn't he?

A Cleveland, that's right.

Q In 1968 you went to your lawyer and you asked him to see if he could have Rio Rancho transfer certain property which was in both your wife's and your name, to your name? Do you recall that?

A That I don't remember. I don't have it in my records and I don't remember it.

Q Do you recall ever asking your lawyer to write to Rio Rancho in order to have certain land which you had purchased invested only in your own name, in 1968, October 1968?

A Very likely, but I was told this is not legal in Ohio.

Q But you wanted that?

A Apparently I didn't know, when I wrote the letter. I didn't know about it.

Q But you wanted that to be the case, didn't you? You wanted the land to be in your own name; not your wife's, but your own name?

A Because my wife started to be interested in Florida.

Q That was the way you were going to divide it up?

A Then I started paying all Rio Rancho by myself because she couldn't cover both. She was making very little money as an intern and then resident.

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Q Did you ever discuss with your lawyer the fact that you were not going down to view your property during the cancellation period of six months?

A Maybe I did. But I did not want to cancel, in the first place; and as far as relocating -- of course, I didn't.

Q You did not discuss it with him, then?

A I don't think so.

Q You never discussed with him that you had the right to cancel in six months if you saw your property?

A He must have seen those --

MR. KAUFMAN: Your Honor, I object to this. He already testified that he knew he had that right.

THE COURT: He wants to know if he discussed it with his lawyer.

THE WITNESS: I don't remember. '68 is what, eight years ago. I don't remember.

Q Did you ever discuss with your lawyer what your legal rights were under the contract you had with Rio Rancho?

A How do you mean?

Q Did you ever say to him or ask him whether or not -- did you ever discuss with him that you had the right to exchange the property? Did you ever discuss that with him?

A I did.

Q Did you ever discuss with him that you had a right to exchange your property if you bought into a developed area then you wanted to move there?

A I did.

Q And he read the contract for you?

A That was in the contract.

Q And you knew you had that right?

A Yes.

Q Did you ever discuss with your lawyer anything else about what was contained in the Rio Rancho contract?

A Such as?

Q Anything else.

A He was helping me out to draft those --

THE COURT: No, he wants to get through today, if we can.

THE WITNESS: Then don't ask me questions going back to eight years ago --

THE COURT: If you don't know, say you don't know.

A I don't know.

Q How many times did you see your lawyer in respect to Rio Rancho land?

A I don't remember.

Q Do you recall how soon after you purchased Rio Rancho land you saw your lawyer?

A I don't remember.

MR. ARKIN: I have no further questions.

THE COURT: Redirect?

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REDIRECT EXAMINATION

BY MR. KAUFMAN:

Q Dr. Sporzynski, do you remember Mr. Fleming showing you Defense Exhibit FG for identification, the letter that you received from David Heil?

A Right.

Q And Mr. Fleming referred you to the third paragraph and he asked you about the language in here that talks about, it's possible that within five years you may be able to realize a return on your investment?

A That's right, yes.

Q That is the paragraph he asked you about, is that right?

A Yes.

Q This third paragraph?

A Yes.

Q This is the letter you received from David Heil, is that right?

A Yes.

MR. KAUFMAN: The government offers FG for identification.

(Defendants Chester Carity and Daniel Friedman Exhibit FG marked for identification was received in evidence as Government Exhibit 129-BB in evidence)

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(Mr. Kaufman read to the jury from Government Exhibit 129-Bb in evidence)

Q Dr. Sporzynski, I show you what has been marked Defendants Exhibit FH in evidence.

Do you recall Mr. Fleming asking you about this letter which refers to friends who are possibly interested in Rio Rancho land?

A Yes.

Q Am I correct, this letter goes on to say, "With regard to this, I would appreciate receiving the following information: Current prices on the property similar to mine, rate of interest charged by Rio Rancho, and projected price increase this year."

And then you follow with a description of your property?

A Yes.

Q I show you what has been marked Government

Exhibit 129-C for identification and ask you if you can identify that.

A Yes.

Q Is that a letter he received in response to FG?

A Yes.

MR. KAUFMAN: The government offers 129-C.

MR. ARKIN: No objection.

(Government Exhibit 129-C received in evidence)

MR. KAUFMAN: May I read from this, your Honor?

THE COURT: Yes.

(Mr. Kaufman read from Government Exhibit 129-C in evidence to the jury)

Q Dr. Sporzynski, I show you what has been marked Defense Exhibit FI in evidence.

Do you recall Mr. Fleming asking you about this No. 2 here with respect to, according to Mr. Galt, Rio Rancho may establish a resale of office after all the lots are sold. At this time approximately sixty percent of the lots have been sold?

A Correct, yes.

Q Do you recall Mr. Fleming asking you whether you read anything in this letter to the contrary with respect to any other representations about resale?

A No.

Q Let me show you a letter which has been marked as one of two letters of Government Exhibit 129-K and ask you again, can you identify that?

A Sure.

Q Is that your letter?

A That's right.

Q A letter that you wrote on April 20, 1970?

A Correct.

MR. KAUFMAN: Your Honor, the government again offers just the April 20, 1970 letter, part of 129-K. Maybe for this purpose we can just give it another number for the new offer.

THE COURT: Show it to counsel.

(Pause)

MR. FLEMING: I object again, your Honor. Same basis.

THE COURT: Let me see it.

(Pause)

THE COURT: It is related to FI?

MR. KAUFMAN: That's right, your Honor. And Mr. Fleming's questions are with respect to FI.

(Pause)

THE COURT: I don't know what it refers to.

MR. KAUFMAN: May I be heard at the side bar, your Honor?

THE COURT: Give me a date. FI is a letter dated March 13, 1973. This is dated April 20, 1970.

MR. KAUFMAN: That is the point, your Honor. If I may make thepoint at the side bar.

THE COURT: Objection sustained.

MR. KAUFMAN: Your Honor, this is important. May I make a brief offer at the side bar.

THE COURT: You may go ahead. Next question.

Q Dr. Sporzynski, before this letter dated March of 1973, which is Defense Exhibit FI, before you wrote this had you previously informed Rio Rancho Estates that you had been told that a resale office was going to be opened?

A Apparently, yes. This was before.

MR. ARKIN: Objection.

THE COURT: He is referring to a short time before, not three years before.

Q How soon before --

THE COURT: I suggest you go on to something else.

MR. KAUFMAN: Your Honor, if I can ask the question, it would determine --

THE COURT: I suggest you ask something else.

Q Dr. Sporzynski, you testified that at the dinners that you attended between 1966 and 1970 you were told that the company intended to open a resale office, is that right?

A Correct. They gave the date.

MR. ARKIN: Your Honor, that was already asked and answered.

THE COURT: That's right. It's been gone over to a fare-thee-well. Do you have something else on redirect?

Q I show you what has been marked Government Exhibit 129-D for identification and ask if you can identify that letter.

A I do.

Q Is that a letter that you received in response to Defense Exhibit FI?

A Yes.

MR. KAUFMAN: The government offers 129-D.

MR. ARKIN: Dr. Sporzynski, did you ever speak with the lady who signed the letter which you say you received in response to the letter you sent?

THE WITNESS: What's her name?

MR. ARKIN: Harriet James.

THE WITNESS: No, I don't think so. I always corresponded. Each time I receive somebody --

MR. ARKIN: No objection.

(Government Exhibit 129-D received in evidence)

MR. KAUFMAN: If I may read a part of this, your Honor.

(Mr. Kaufman read from Government Exhibit 129-D in evidence)

MR. KAUFMAN: No further questions, your Honor.

THE COURT: Next witness.

MS. HYNES: We have no further witnesses today.

THE COURT: You may step down.

(Witness excused)

MS. HYNES: At this time the government will offer Exhibit 872 and 1024.

MS. CROSS: Your Honor, I believe they are going to go down the list of exhibits which we discussed, as to which we have certain objections. I don't know whether you want to continue in front of the jury now.

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THE COURT: I thought you were supposed to have met by now and let me know those you have no objection to.

MS. CROSS: Not these two.

THE COURT: Do you have any objection to those?

MS. CROSS: Yes, we do.

THE COURT: Do you have any you want to offer, Ms. Hynes, to which they say they have no objection?

MS. HYNES: No, your Honor.

THE COURT: Well, I will let you go home. See you tomorrow at 10:00 o'clock.

(Jury left the courtroom)

THE COURT: How many do you have to which there are objections?

MS. HYNES: The documents we have proffered to the defendants, we have been all through those documents before and they raised objections. They still have the same objections.

THE COURT: My record shows this was stricken October 29th. You offered it and I sustained the objection to it. Why do you go over it again?

MS. HYNES: Because at this time, this is an internal corporate memo which appears in the microfiche of the company.

We now have the microfiche, which has been produced pursuant to a trial subpoena which shows that this memorandum appears in that microfiche. It is relevant to the testimony that we have heard today and it is relevant to the testimony we have heard through the trial in connection with the company setting up a resale program.

It is Marianne Newman,the director of customer relations.

THE COURT: Let me see it.

(Pause)

THE COURT: I see no objection to the first three paragraphs.

I have a problem with the fourth paragraph.

MS. CROSS: Is this the Marianne Newman memo?

THE COURT: Yes.

MS. HYNES: Your Honor, if I can see the fourth paragraph, perhaps we can withdraw it.

THE COURT: It speaks about another lawsuit pending and Kapps and Knapps being prominent people in Philadelphia.

MS. CROSS: Our basic objection to the entire document is that it recites what apparently the Kapps have told or written in a letter to Miss Newman.

The letters that --

THE COURT: I read it as Miss Newman saying this is her understanding of what the defendants have been doing.

MS. CROSS: No, I don't read it like that at all.

THE COURT: I think it is for the jury.

As I read it it is.

I will let it in.

MS. HYNES: Your Honor, with respect to paragraph four, the government will withdraw its offer and we will offer only the first sentence of paragraph four.

THE COURT: No, the whole paragraph goes out.

(Government Exhibit 872 received in evidence)

MS. HYNES: Your Honor, Government Exhibit 1024 is also an internal corporate -- I am sorry.

This is a letter which is reflected -- it appears in a microfiche, and these are the documents that the defendants got back to us and toldus do, in fact, appear in consumer microfiche.

MS. CROSS: Your Honor, along with 1024 goes 1022, 166-F, 170-K and 1709.

These perhaps should all be discussed together, because they all are letters, form letters, sent out by the company to various people on the matter of resale, which the government wants to introduce into evidence without a witness being here.

We believe that they are cumulative and not relevant without a witness.

MS. HYNES: Your Honor, at the present time, we are offering 1024.

THE COURT: Let us see the others.

There is the same objection to all of them. I can look at all of them at the same time.

MS. HYNES: Your Honor, I am not sure we are offering all of them.

THE COURT: Well, make up your mind now.

MS. HYNES: And they don't relate.

There are other documents that relate to a different issue.

THE COURT: Let us take the ones she mentioned and let me look at them.

MS. HYNES: Okay.

(Handing to the Court)

MS. HYNES: 170-K we are offering.

THE COURT: You got 170-K in in numerous exhibits and oral testimony before the Court.

MS. HYNES: Your Honor, the point of 170-K is that Mr. Fleming brought out in his cross examination of Mr. Ron Williams that Paul Heinz was soliciting listings for himself to list in Rio Rancho.

170-K is offered because it shows that the company was referring their customers upon inquiry for resale of Paul Heinz.

THE COURT: But that does not negative the fact that Heinz was soliciting.

Objection sustained.

MS. HYNES: But we do not have a document like that in.

THE COURT: Next one.

THE CLERK: Government Exhibit 166-F.

(Handing)

THE COURT: Same ruling.

MS. HYNES: 1709 is --

THE COURT: 166-F, the objection is sustained. Do you have 1024 here?

MS. CROSS: 1024, yes.

THE COURT: Who is Roger L. Jack?

MS. HYNES: He is a purchaser, your Honor. It is another one that appears in the microfiche for a purchaser.

THE COURT: I am going to sustain this objection, too.

The record is loaded with these, Ms. Hynes. I don't need any more; neither does the jury for your purposes.

MS. HYNES: 1709 is from RR Realty, which is a member of the multiple listing, and they are referring a customer to Paul Heinz.

MR. FLEMING: Your Honor, may I put something on the record, if your Honor please?

THE COURT: Yes. In connection with your

objection to this exhibit?

MR. FLEMING: In connection with Paul Heinz.

We received 3500 material on Heinz sometime ago. I understood he was going to be a government witness. I understood he was in New York and sent home.

It really bothers me that indiscretion is used in this fashion.

MS. HYNES: This is a company document. It is RR Realty, which is a wholly owned subsidiary, it is not a piece of correspondence from Mr. Heinz; it is a reference and referral by RR Realty, your wholly owned subsidiary, to Paul Heinz.

THE COURT: Objection sustained to 1709.

What else?

MS. HYNES: Your Honor, I don't know whether you have ruled on 1024. Have you?

THE COURT: Yes. I sustained the objection.

MS. HYNES: Your Honor, I have no further documents to offer at this time.

I will offer -- well, this should be done in front of the jury -- that mailing for Barit Hampe has not been offered yet. It is a company document.

There is no objection to that document.

THE COURT: Hampe?

MS. HYNES: Hampe.

MS. CROSS: It is a computer printout.

We have no objection to the computer printout.

THE COURT: I have Exhibit 167-G which refers to her mailing. Is that wrong?

Isn't 167-G the mailing for Hampe?

MS. HYNES: I am checking it, your Honor.

(Pause)

THE COURT: A letter received by the witness.

MR. KAUFMAN: 167-G is a copy of "This is My Land."

THE COURT: All right.

What is this number?

MS. HYNES: 167-A.

THE COURT: And that is submitted without objection?

MS. HYNES: That is correct, your Honor.

MS. CROSS: That is the computer printout one, 167-A?

MS. HYNES: Yes.

MS. CROSS: Yes.

No objection.

THE COURT: All right.

x (Government Exhibit 167-A received

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in evidence)

THE COURT: What else?

MS. HYNES: Your Honor, at this time I don't have any documents to offer that there have not been any objections.

Does your Honor want to go through and rule?

THE COURT: Yes, let us spend a couple more minutes.

MS. HYNES: Let me correct that, your Honor.

The government is offering 882.

There is no authenticity objection on 882.

In a conversation with Joan Dacey, it was stipulated by myself and Ms. Dacey on November 19, 1976, that there would be no objection to that document.

There is no authenticity objection on the document.

THE COURT: What is the number?

MR. ARKIN: 882.

MS. CROSS: Your Honor, I believe our understanding of that was that we had no authenticity objection to that document.

It is, however, a document that the government proposes to introduce apparently without any witness who ever received it.

MS. HYNES: The representation that I made to Ms. Dacey and which was the basis of the stipulation that there would be no objection after she had checked with defense counsel was that this document, in fact, had been distributed, and we told her that it had been distributed to a Robert Gaudett, who is a count person.

Mr. Gaudett is with the Army Corps of Engineers and is at sea, but the point whether the document was actually distributed to someone we have represented has been distributed to someone.

THE COURT: Ms. Dacey?

MS. DACEY: I understood we were talking about authenticity, your Honor.

THE COURT: What?

MS. DACEY: I said, I thought we understood we were stipulating just to authenticity.

THE COURT: That you were not stipulating that this had been circulated?

MS. DACEY: Ms. Hynes represented to me that she had received it, I believe, from Mr. Gaudett.

MR. ARKIN: We did not stipulate to the receipt by Mr. Gaudett, we stipulated to authenticity, your Honor.

MS. HYNES: Your Honor, I was requested by

Ms. Dacey to find out whether that, in fact, had been used.

I represented to her that it had, in fact, been used in the sense it had been given to Mr. Gaudett. That was her inquiry; that was my response.

She got back to me, said there was no objection, it was a stipulation.

THE COURT: She now says she didn't, that she only stipulated as to authenticity, not to the fact that it was distributed.

Absent any proof that it was distributed, I can't let it in.

MS. HYNES: Your Honor, with respect to that document, there is an NYA number on it.

The defendants have already stated that with any document where there is an NYA number, there would not be an authenticity objection, so the reason to go the next step and discuss it --

THE COURT: Ms. Dacey says she didn't make that stipulation with you.

MS. HYNES: Well, I have to respectfully disagree with that.

THE COURT: Well, she says she didn't. I am not going to say she did. I am not going to decide that issue.

It is not coming in without proof that it was distributed.

The mere fact that it has an NYA number on it does not mean it was actually distributed.

They may have asked to have it approved, in quotes "approved," but without that it can't come in.

What other documents do you have?

MS. HYNES: Your Honor, 657 is the document that we offered at the end of last week, which is a memo to Sherman Lurie.

The government does not intend to call Mr. Lurie.

The document was not written by Mr. Lurie.

THE COURT: Let me see it.

(Handing to the Court)

THE COURT: Who is Mr. Colegrove?

MS. HYNES: Mr. Colegrove was identified by Mr. Perlmutter on the stand on December 1st.

He is a public relations person and the editor of the Roadrunner, which is a newspaper published by Rio Rancho.

THE COURT: Sherman Lurie was head of public relations?

MS. HYNES: No. Mr. Colegrove was head of public relations. Sherman Lurie was head of advertising.

Mr. Perlmutter testified as to both.

MR. ARKIN: Both Mr. Lurie and Mr. Colegrove were on the witness list, were they not?

MS. HYNES: No. Mr. Lurie was on the witness list and Judge Metzner asked us to advise him whether we intended to call him.

THE COURT: The objection is overruled.

657 is admitted.

(Government Exhibit 657 received in evidence)

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THE COURT: What else?

MS. HYNES: 604 is an internal memo from Chester Carity to several individuals.

MS. CROSS: Your Honor, if we can see 604, that was not one of the documents Ms. Hynes gave us at the break, so we would like to look at it.

THE COURT: All right, take a look at it.

(Pause)

MS. HYNES: Your Honor, our notes show --

THE COURT: Counsel are reading it, Ms. Hynes. They can't listen to you and read at the same time.

(Pause)

MR. ARKIN: Your Honor, this particular document is, on its face, a memorandum from Mr. Carity to various of the company lawyers and others who work in the company.

In other words, it is a memorandum which has to do with certain suggested changes and so forth on the back of the agreement and it is, you know, clearly one that has to do with legal scrivening or legal writing.

THE COURT: Not Mr. Oberman or Mr. Hoffman or Mr. Friedman.

MR. ARKIN: No. It is from Chester Carity to, among others, agreed, Mr. Hoffman, Mr. Oberman and Mr. Sommerholder, all of whom at this time within the company and I would say are in the possession of clients, but, two, Mr. Winslow, who was a partner of Javis, Pesinger & Parker and the outside company counsel, and Mr. Simon, who was his associate at that time.

THE COURT: Let me see it.

(Handing to the Court)

THE COURT: What is the memo of November 7, 1968?

MS. HYNES: Your Honor, I don't have that handy.

THE COURT: Objection overruled.

(Government Exhibit 604 received in evidence)

THE COURT: What else?

MS. HYNES: 531.

(Pause)

MR. ARKIN: With respect to Howard Friedman and Henry Hoffman, we object to 531, and also on the grounds that it is cumulative.

THE COURT: Let's see it.

(Handing to the Court)

MR. SPRIZZO: The same objection on behalf of Daniel Friedman.

THE COURT: Objection overruled.

(Government Exhibit 531 received in evidence)

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MR. FLEMING: Your Honor, I --

THE COURT: Yes?

MR. FLEMING: Has there been a witness who purchased through Sunshine Properties, Inc.?

THE COURT: I don't think it makes any difference. This shows Mr. Friedman's knowledge of the form of presentation and his comments on it.

MR. FLEMING: That was my point, your Honor. It is directed to "a trip to your office."

THE COURT: I don't think it makes any difference in view of the fact they were standardizing these presentations and this shows Mr. Friedman was involved.

MR. FLEMING: My objection would be based on that fact.

THE COURT: Objection overruled.

MS. HYNES: The next two exhibits are --

THE COURT: How many more do you have?
Have you gone over with defense counsel?

MS. HYNES: Your Honor, I --

THE COURT: Today, I mean.

Remember this morning I said go over with defense counsel?

MS. HYNES: Yes.

THE COURT: You have gone over all of them?

MS. HYNES: We have gone over --

THE COURT: What I am bringing up now is things you have not gone over with them at the break?

MS. HYNES: Yes.

THE COURT: You sit here now and go over with them, because I have another case, as you know, waiting upstairs for me. Finish tonight.

MS. THOMPSON: We have another matter.

THE COURT: I will listen to you, Ms. Thompson.

MS. THOMPSON: Yes, your Honor. I promise to be brief.

On Friday afternoon, AMREP Corporation and Rio Rancho Estates were served with a subpoena returnable today for, "All records, memoranda and distribution sheets showing the initial date of distribution of pamphlet, "What You Should Know About Real Estate Ownership, A Ten Point Statement from the AMREP Corporation."

We are moving to quash the subpoena, your Honor, basically on two grounds:

The document about which the records, memoranda and distribution sheets are sought is a premarked government's exhibit, premarked as Government Exhibit 370.

To this point the government has not offered the document in evidence. Were it to offer it in evidence, we would certainly object to its relevancy.

Any documents dealing with its date of distribution seem to have no bearing on this lawsuit.

Moreover, I sought to point out that a copy of the document was in Dr. Sporzynski's materials turned over to us and presumably had the government intended to offer the document they would have done it through Dr. Sporzynski.

Since they have not done so, I see no relevance of the subpoena and move to have it quashed.

THE COURT: Ms. Hynes?

MS. HYNES: The reason why we served the subpoena was that because that pamphlet did appear in Dr. Sporzynski's file. The government did not intend to offer it, but if the government had offered it we wanted to show when, in fact, it was distributed. That was the reason for the subpoena.

THE COURT: The motion is granted, Ms. Thompson.

On that victory, we will adjourn until tomorrow.

(Adjournment taken to December 21, 1976, at 10:00 o'clock a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Adam P. Sporzynski	5319	5350	5412	

EXHIBIT INDEX

Government	Identification	In Evidence
69		5302
491,638		5310
129-N		5322
129-O		5322
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UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al.

December 21, 1976
10:00 a.m.

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(Trial continued.)

(In open court in the absence of the jury.)

MR. KAUFMAN: Your Honor, we will be ready with the witness in about five minutes.

THE COURT: Let's get the documents, then.

MR. KAUFMAN: Fine.

MS. HYNES: Your Honor, let me report on the documents where there is no disagreement.

THE COURT: Ms. Hynes, I am really not worried about those. I want to rule on those where there is a dispute so we don't have to waste the time with the jury present.

MS. HYNES: Fine.

The first document, Exhibit 556, which is a document, an internal corporate document, memo from Howard W.

Friedman to Chester Carity, Dan Friedman and Solomon Friend, dated July 5, 1973.

THE COURT: Let me see it.

(Handing to the court.)

THE COURT: What is the objection?

MS. CROSS: The objection is that it deals with Rainbow Lakes and more than the general Rainbow Lakes objection, it deals with sales at Rainbow Lakes.

The only claim of relevance that the government has is development at Rainbow Lakes and not sales.

MR. FLEMING: Second, your Honor, this is a 1973 memorandum.

I reviewed the government's memorandum supporting the submission of Rainbow Lakes at all, and to my recollection the only reference to Rainbow Lakes was in a 1967 or so script. This is a 1973 memorandum.

I don't see the relevance. In fact, I don't see the relevance of Rainbow Lakes evidence at all based on the government's showing at this trial.

THE COURT: Ms. Hynes?

MS. HYNES: Your Honor, there is testimony in the brief that we have submitted. The testimony relates to Mr. Bondy, which was in 1972, and the testimony has been that there has been reference to Rainbow Lakes in scripts and, therefore, was made at party presentations.

There was testimony by Mrs. Henry that she was told about Rainbow Lakes.

Basically, the testimony has been that Rainbow Lakes was represented to be a successful community. That memorandum from Mr. Howard Friedman clearly shows that it is not a successful community, is not entirely built and that that is relevant information for this jury to know concerning the fact that they have represented Rainbow Lakes to be the successful, thriving, fully developed community when, in fact, the testimony by Mr. Perlmutter has been that as of this date, there are 570 homes and there are roughly 13,000 home sites.

THE COURT: My problem with this is the testimony on Rainbow Lakes has been minimal after seven weeks of trial.

Objection sustained.

MS. HYNES: Your Honor, it is in the scripts, and your Honor has --

THE COURT: Objection sustained.

What else?

MS. HYNES: Your Honor, we have one statement in an SEC filing in 1968 --

MS. CROSS: What exhibit number is that?

MS. HYNES: 410.

-- which sets out, at page 13, that Rainbow Lakes Estates consists of 10,000 acres and 13,257 home sites.

We just offer that paragraph that relates to Rainbow Lakes.

THE COURT: The same ruling.

What exhibit number is that?

MS. HYNES: That was page 13 of Trial Exhibit 410.

Other pages of 410 are in evidence.

THE COURT: Just a second.

MR. RUBINO: May we know which pages of Exhibit 410 are in evidence?

MR. FLEMING: Yes.

MS. HYNES: Your Honor, while we are dealing with 410, I offer 410-A.

There is no dispute that that is Mr. Oberman's signature (handing).

MR. RUBINO: I object to that document on the ground of relevance, your Honor.

THE COURT: Objection sustained.

MS. HYNES: Your Honor, that has got to be taken in connection with 410, which is the filing.

The filing is already in evidence.

Page 8 has been offered in evidence, and that letter shows Mr. Oberman's knowledge.

Page 8 sets out how the company --

THE COURT: Knowledge of what?

MS. HYNES: Pardon?

THE COURT: You say this letter, 410-A, shows Mr. Oberman's knowledge and you stopped there, and I want to know knowledge of what.

MS. HYNES: Okay.

It shows that Mr. Oberman reviewed the registration statement, which is 410 in evidence, and that he stated that he is familiar with that registration statement.

THE COURT: Is there any denial that he didn't read it?

MR. RUBINO: I don't deny that he read it, your Honor, but the letter that is offered tries, as I understand the thrust of the government's offer, it tries to impute to Mr. Oberman, because it recites the manner in which they did business, that he knew that the manner in which they were doing business consisted of using misleading and fraudulent material, and it just does not follow.

THE COURT: This letter says, "I wish to advise you I am familiar with the above statement and I have knowledge of any materially adverse information concerning AMREP Corporation."

MR. RUBINO: And the adoption of the report with respect to saying that he has no adverse knowledge does not mean that he suggests that he knows anything about the manner in which they conducted their promotional sales activities.

THE COURT: He says he read the statement.

MR. RUBINO: Your Honor, what I am concerned about is the statement does not say anything obviously in respect of a fraudulent scheme or fraudulent advertising.

What I am concerned about is in respect of this document and other documents that Ms. Hynes is attempting to produce that in the aggregate and cumulative has an opposite effect on material which is very remotely relevant, if relevant at all.

THE COURT: But the statement is in evidence and Mr. Oberman says he read it.

MR. RUBINO: I have objected to the statement being received. I thought you sustained my objection.

THE COURT: What statement?

MR. RUBINO: I am sorry, the letter in which he says --

THE COURT: But now she is pointing out to me why it is coming in, and you are stating that you do not want it let in even though it says that Mr. Oberman read the registration statement.

MR. RUBINO: Yes, I am, your Honor.

THE COURT: Objection overruled.

I reverse myself.

But I don't let the first paragraph in about his sale of his stock.

MS. HYNES: No, we are only offering the second paragraph, your Honor, we are not offering the first paragraph.

(Government's Exhibit 410-A was received in evidence.) XXX

MS. HYNES: Your Honor, so the record is clear, wehn the government offered 410, which is the registration statement --

THE COURT: Just a second. Let me find it in my notes.

You offered it back on November 10th.

Go ahead.

MS. HYNES: Your Honor, when the government offered 410, we offered page 8 and then we read a portion of page 8.

I just want the record to be clear that we are offering the entire page 8. We are not going to read it at this time. It has been read through other reports. But we want the entire page 8 of 410 to be clearly stated that the entire page is in evidence.

THE COURT: What does the record show on November 10th as to what you stated at that time?

MS. HYNES: That we were offering page 8, and then I read a portion of page 8.

THE COURT: All right.

MS. HYNES: Your Honor, on another registration statement that is filed in September of 1971, which is Government's Exhibit 409-A in evidence, there is another sentence that I would offer which relates to Rainbow Lakes Estates, and that sentence states that substantially all the lots have been sold at Rainbow Lakes Estates as of that date.

THE COURT: I make the same ruling regarding this reference to Rainbow Lakes as I did the others.

MS. HYNES: Your Honor, the next document that the government will offer is Government's Exhibit 586.

Your Honor has previously ruled on 586 with respect to the first part.

We are only offering paragraph 13 of this document, on the last page, at this time, and there was no ruling on that paragraph.

THE COURT: Let me see it.

(Handing to the court.)

(Continued on next page.)

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MS. CROSS: Your Honor, as to Paragraph 13, I believe your Honor ruled that the government must lay a foundation --

THE COURT: That is what my notes show.

MS. HYNES: Yes. We were referring to Sennix, and the transcript --

THE COURT: What is that, Six, page 2? Is that what you are referring to?

MS. HYNES: I am referring in that exhibit to the last paragraph, which I think is numbered 13, which says ATC scripts.

THE COURT: What is the objection to that?

MR. WEIDNER: Your Honor, if I might be heard briefly, paragraph 13, which Ms. Hynes refers, concerns itself with a review of a Silver Springs Shore script. That is the SSS script.

THE COURT: What about the first sentence?

MR. WEIDNER: "Worked with Peter Miller on plane trip to Rio to develop general concepts of new ATC scripts."

I think, your Honor, the whole paragraph has to be read together.

THE COURT: Was ATC involved in Silver Springs or Silver Shores?

MS. HYNES: No, your Honor.

MR. WEIDNER: Yes, at the time they were, and as well Len Rich was responsible, as I understand it, for drafting Silver Springs Shore materials.

MS. HYNES: Silver Springs was sold in New York through LTA and ATC and the testimony has been on the stand by anyone connected with ATC that they only sold Rio Rancho land.

That paragraph clearly refers to Rio scripts.

I don't have it in front of me, but my recollection is that it refers to Rio scripts.

THE COURT: No, it does not. It refers to SSS scripts. On a plane going to Rio they discussed SSS scripts.

MS. HYNES: I have to see the paragraph.

THE COURT: The heading is, "Revised ATC Rio and Silver sales script."

MS. HYNES: That's what I am working with.

THE COURT: "Worked with Peter Miller on plane trip to Rio to develop general concepts for new ATC scripts. Reviewed Miller's comments on SSS scripts drafted by Len Rich. Miller had some very good suggestions regardin the --" well, the only sentence that I can see that can come in is the first sentence, "Work with Peter Miller on plane trip to Rio to develop general concepts of ATC scripts."

My understanding was that ATC only sold Rio from the testimony so far.

MS. HYNES: Your Honor, we are also offering the caption.

MR. WEIDNER: Your Honor, my problem is this:

I think what this paragraph says is that Friend and Miller went over a script that Rich had drafted for Silver Springs Shores.

THE COURT: No, that is not so.

The first sentence refers to Rio, the second sentence refers to Silver Springs.

MR. WEIDNER: I understand. But if Miller and Friend went over Silver Springs Shore scripts with the idea that that script was then to be used for Rio --

THE COURT: I can't draw that inference.

MR. WEIDNER: Well, without the script, and I suggest that perhaps this document -- in fact, I suggest the document is incomplete without the script, because you really can't tell precisely what they are talking about.

I agree it may not be easy to understand it, but I think that that is a fair interpretation of that,

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that they were going over Silver's scripts.

THE COURT: It says, "to develop general concepts for new ATC scripts," period.

MR. WEIDNER: Yes.

THE COURT: My understanding from the evidence in this case is that ATC only sold Rio Rancho.

MR. WEIDNER: Yes, your Honor, but assuming that -- I don't disagree with your Honor.

THE COURT: So, therefore, this is an indication that Mr. Friend worked on scripts with Miller regarding ATC for the sale of Rio Rancho. He also worked with him on SSS.

MR. FLEMING: Your Honor, my recollection fails me, but is there a script in evidence which postdates this memorandum?

THE COURT: I don't know.

MR. FLEMING: Because if there is not, then it seems to me it has no relevance to their working on a script.

THE COURT: That objection is overruled.

I will let in the first sentence.

MS. HYNES: Your Honor, we are offering the heading of the paragraph as well.

THE COURT: But the sentence does not carry out that heading.

The revision of scripts only refers to SSS.

(Government Exhibit 586 received in evidence)

THE COURT: That is 586, Paragraph 13.

MS. HYNES: The next exhibit is 951,your Honor.

MR. WEIDNER: Excuse me, Ms. Hynes, if I may for a moment.

Your Honor, am I correct that you have admitted just the first sentence?

THE COURT: That is right.

MR. WEIDNER: Not the heading?

THE COURT: That is right.

MR. WEIDNER: Thank you.

THE COURT: What is the next one?

MS. HYNES: Government Exhibit 951.

THE COURT: Yes.

MS. CROSS: The objection, your Honor?

THE COURT: Yes.

MS. CROSS: It is incomplete without having the attached G and A and selling expenses.

We have no idea what this refers to in terms of what development.

AMREP Corporation had five developments or five or six, and it is unclear whether this deals with Rio Rancho or some other place.

THE COURT: Let me see it.

(Handing to the Court)

MS. CROSS: It also appears to be irrelevant.

THE COURT: Wait. Let me read it.

(Pause)

THE COURT: How do you get around that, Ms. Hynes?

MS. HYNES: Your Honor, it is hard for me to argue without it in front of me.

THE COURT: All right.

(Handing)

MS. HYNES: In this memorandum 951, Mr. Friend is giving the conclusion that the selling expenses of sales are fifty percent.

Now, if the selling expenses for sales are fifty percent, it would include all of the subdivisions that they are dealing with.

THE COURT: I will only take regarding Rio Rancho. That is too general.

You are talking about the overall operation of AMREP, not relation to Rio Rancho.

MS. HYNES: Your Honor, this was produced pursuant to a subpoena addressed to Rio Rancho, AMREP and Rio Rancho.

Our request for documents were only documents that related to Rio Rancho. We were not concerned with documents relating to other subdivisions.

THE COURT: The objection is sustained.

MS. HYNES: The next document is 953.

THE COURT: What is the objection?

MS. CROSS: We think it is irrelevant, your Honor.

THE COURT: Let me see it.

(Pause)

THE COURT: What is this supposed to prove?

MS. HYNES: Your Honor, thos are the growth projections for 350 to 400 homes per year for Rio Rancho and that document ties in with Mr. Friend's grand jury testimony in connection with what the projections were.

MS. CROSS: Your Honor, I don't think you can read from that document the projection for the next hundred years which is what Ms. Hynes would like to read into that.

THE COURT: No, it is only for the period of July 24, 1973.

MS. CROSS: If you read that in connection with Mr. Friend's grand jury testimony, that is an attempt to project 350 homes a year for the next two hundred years.

THE COURT: Mr. Friend sort of indicated that was the general feeling of AMREP.

MS. CROSS: I wouldn't characterize it that way. He was read a brief and was told that those numbers had been provided.

THE COURT: Mr. Friend was an active participant in AMREP.

MS. CROSS: Yes.

THE COURT: He just wasn't parroting what somebody told him to say before the grand jury, was he?

MS. CROSS: No, but his initial answer to the question was for much more than that, much greater.

THE COURT: Objection overruled.

(Government Exhibit 963 received in evidence)

THE COURT: What else?

MS. HYNES: Exhibit 813.

THE COURT: Yes.

MS. CROSS: We object.

MS. THOMPSON: Your Honor, it has reference to Silver Springs.

MS. HYNES: Your Honor, we would not offer those portions of it.

MS. THOMPSON: It is cumulative.

MS. CROS: It is also irrelevant, your Honor.

THE COURT: Who is Cable?

MS. CROSS: Cable is a subsidiary of AMREP Corporation in the publication business.

THE COURT: You are not offering paragraph 2, are you, Ms. Hynes?

MS. HYNES: No, your Honor, we are not offering anything that represents to Cable or if there is another reference to Silver Springs.

THE COURT: Objection overruled.

(Government Exhibit 813 received in evidence) xx

MS. HYNES: Exhibit 584. We are offering only portions of this exhibit, your Honor, which relate to Rio Rancho. Those are the --

MS. CROSS: Your Honor.

MS. HYNES: Let me put on the record what I am offering.

MR. FLEMING: Your Honor has ruled on 584.

MR. WEIDNER: It has been excluded previously, your Honor.

MS. HYNES: Your Honor, let me make my statement, what part I am offering. I am offering the first paragraph -- I am offering paragraphs F and G on page 2 which relates to Mr. Friend's involvement in the construction activities at Rio Rancho. His receiving reports on the construction activities on Rio Rancho which would also be relevant in connection with his grand jury testimony.

On page 3, paragraph numbered 6, which relates to condominiums and the exchange into condominiums and the final paragarph on the last page which tells people to report back to Mr. Friend on the specifics raised in the memorandum. It is a memorandum from Mr. Friend. It shows his involvement in the construction activities and his involvement in non-legal matters of the company.

MR. WEIDNER: Your Honor, if I may, I don't see that construction matters are part of this case at all.

THE COURT: I haven't looked at it so I can't discuss it with you.

MR. WEIDNER: I am sorry.

MS. HYNES: Your Honor,it also shows that Mr. Friend has a basis for his statements on the rate of development that he testified to in grand jury and that this was his area of involvement in the company and that he was in charge of that area of involvement in the area.

THE COURT: What is the portion you are offering?

MS. HYNES: Just the introductory paragraph which says there is a check list and on the second page paragraphs F and G.

THE COURT: G, I don't know what it refers to. F refers to Rio.

MS. HYNES: G does also because Mr. Dellantash and Mr. Jones have been identified as being in charge of construction at the projects.

MS. CROSS: That I don't believe is true. They did work at Rio Rancho but I believe that had other responsibilities as well in Florida.

THE COURT: Objection overruled.

xx (Government Exhibit 584 received in evidence)

MR. WEIDNER: That is, your Honor, just as to paragraphs F and G on page 2 of Exhibit 584.

THE COURT: Paragraphs F and G on page 2, paragraph 6 on page 3 and the final paragraph on the last page are in.

The next.

MS. HYNES: The next exhibit is 923, your Honor. This exhibit again shows Mr. Friend's involvement in areas that are not legal and shows Mr. Friend's knowledge of inventory, allocations to the various sales offices, including foreign offices. The exhibit can better speak for itself.

MR. WEIDNER: What exhibit number are you speaking of?

THE COURT: 923.

MS. HYNES: 923.

MS. THOMPSON: Your Honor, we both objected to it on relevancy grounds and also that it is incomplete. The attached blocking map is not attached.

THE COURT: I don't think you need the attachment in view of the purpose for which it is offered.

MR. WEIDNER: Your Honor, I would like to say that this is simply a collection of materials for inclusion in state or federal filings that had to be made.

THE COURT: Where is the memo of March 24, '72, which this is a response to?

MS. HYNES: I do'nt have that handy, your Honor. I am not sure that it was produced. I don't recall.

MR. WEIDNER: Absent that memo, your Honor, I suggest that this memo itself may be misleading because it may give the impression that it relates to more than simply a collection of information for filings.

THE COURT: I think you ought to look for that March 24th document before I pass on it.

MS. HYNES: Your Honor, the next exhibit is Exhibit 732. This is a memo from Mr. Friend which relates to the purchase of the King property at an average price of $180 --

THE COURT: That is in the record already.

MS. HYNES This is the exhibit referred to in the grand jury testimony and we would offer it.

THE COURT: What can the objection be to that?

MS. CROSS: We didn't go over that one last night.

THE COURT: I thought you were supposed to finish everything last night that was going to be offered for the balance of the trial.

MR. WEIDNER: Your Honor, our objection would be that this simply relates to Mr. Friend's acting as a lawyer in closing title to this additional tract of land in 1971. If I recall correctly --

THE COURT: This is referred to in the grand jyry testimony which is going to be read to this jury. What is the objection to having the proper exhibit in?

MR. WEIDNER: It will be the same objection, your Honor --

THE COURT: I have overruled that one. Objection overruled.

xxx (Government Exhibit 732 received

in evidence)

MS. HYNES: The next exhibit is 807.

THE COURT: Yes, let me see that. Am I going over material you haven't taken up with the other side?

MS. HYNES: No, your Honor.

THE COURT: Have you seen 807?

MS. CROSS: Yes, we saw 807 last night and we think it is cumulative to the other exhibits and information that is already in the record.

THE COURT: I don't think this is necessary, Ms. Hynes.

MS. HYNES: Your Honor, it relates to activities and recommendations by the executive committee.

THE COURT: You have in the record they bought it and the officers and directors are charged with the knowledge that they bought it.

Objection sustained.

MR. WEIDNER: May we return to 732 for a moment. I understand the government's offer relates to its relevance of the purchase of the King land, but there is material on page 2 of that document. That has absolutely nothing to do with the purchases and I suggest it is irrelevant.

THE COURT: Let me see it.

MR. FLEMING: That would be paragraphs 4, 5 and 6.

THE COURT: I don't have it.

MR. FLEMING: I am sorry.

MS. HYNES: Your Honor, I don't believe we are offering 4 and 5. Let me just look at it a moment. Yes, we will not offer 4 and 5.

MR. FLEMING: All right.

MR. WEIDNER: 6?

MS. HYNES: The 732 I have has a paragraph numbered 4 and a paragraph numbered 5.

MR. FLEMING: It has no 6 called real taxes?

MS. HYNES: No. Maybe I should see your exhibit.

THE COURT: Go ahead. What is after 807?

MR. FLEMING: You are just offering 1, 2 and 3, Ms. Hynes, is that right?

MS. HYNES: I am offering everything except paragraphs numbered 4 and 5.

Your Honor, the next exhibit is a 10-K which has been marked 418 and it is signed by Mr. Friend as vice president. It is dated July 21, 1971 . We would offer the signature page, the cover page, pages 2 and 3 and page 12.

With respect to this exhibit, we would offer these pages, we would not read them, but jus so the record is complete, we would offer these pages. These pages basically contain information that has already been read to the jury.

Let me just correct that. The page 12 has a description of acres and lots which have been sold at Rio Rancho and there has been a previous agreement that there would be no objection to that information being offered.

MS. CROSS: Last night we went over Government Exhibits 412, 413, 415, 417 and 418, which are all 10-K's.

MS. HYNES: This is the only 10-K I am offering, your Honor.

MS. CROSS: Your Honor, last night Ms. Hynes said the only page she was offering was page 12 dealing with acres and lots. Apparently this morning she has added to that list.

MS. THOMPSON: When the 10-K's and other various corporate documents come in page by page, we would like a representation from the government of the total number of pages so that the jury understands it is seeing a paragraph or a page from a multi-page document.

THE COURT: What are you offering on 418?

MS. HYNES: Your Honor, without the exhibit, I can't tell.

THE COURT: Read it back.

MS. HYNES: I am offering the signature page, pages 2 and 3, page 12 and the signature page, which I just mentioned.

THE COURT: You have a paper clip here on 37.

MS. HYNES: Is that the signature page?

THE COURT: Yes. All right.

MR. WEIDNER: Your Honor, it seems to me this is all cumulative material that is being offered at this point and adds really nothing to the record.

THE COURT: Objection overruled.

XXX (Government Exhibit 418 received in evidence.)

MS. THOMPSON: One other thing where the 10-K's are concerned, the corporation would also like a statement by the government to the jury that the 10-K's are prepared by counsel for the corporation so that it is clear that unlike the advertising material and other material which is being read to the jury this was not created in-house.

THE COURT: When the 10-K is filed the officers and directors are bound by it. I will not give that statement to the jury because it is misleading. Such a statement to the jury would indicate that the preparer is the only one who is bound by it and anybody else who knew about it is not bound by it and that's not true.

MS. HYNES: Let me clarify one thing with respect to 418. I do not at the present time expect to re[illegible] from this. I just want the record to be complete. If it is referred to in closing arguments, then we don't get to the point of saying how many pages are in the 10-K.

THE COURT: That's not what Ms. Thompson's point is. If you happen to read any of these 10-K's to the jury, you are to indicate to the jury the number of pages in the total document.

MS. HYNES: Okay, I understand.

Your Honor, the next document we would offe

is 917.

THE COURT: Yes.

MS. CROSS: We object to this on a number of grounds. Mr. Sommerholder is on the government's will call list and rather than put in his hearsay statement we suggest he be called as a witness.

We also object on grounds of relevancy, incomplete, that is, it does not include the list of reserve lots for management that he is discussing in the memo, and it is cumulative.

THE COURT: Let me see it.

(Pause.)

THE COURT: Objection overruled.

XXX (Government Exhibit 917 received in evidence.)

MS. HYNES: Your Honor, the next exhibit is 919.

THE COURT: Yes.

MS. HYNES: Which is dated 1968, which also refers to the least of lots in the core area.

MS. CROSS: Again, your Honor, Mr. Sommerholder is a will call witness and we suggest he be called rather than the hearsay nature of the document and also the relevancy objection.

THE COURT: Let me see it.

(Pause.)

THE COURT: Objection overruled.

XXX (Government Exhibit 919 received in evidence.)

MS. HYNES: The next exhibit is 209. It refers to releasing lots in the core area and also difficulty in --

THE COURT: Let me see it.

MS. HYNES: In the exchange privilege with respect to commercial land.

MS. CROSS: We object that it is incomplete. It is hearsay document and Mr. Sommerholder is on the will call witnesses.

It is incomplete because it starts out enclosed are Bob Walsh's recommendations for changes to be made for our master plan of Rio Rancho Estates. Also enclosed is the master plan, map, et cetera.

There is also a relevancy objection.

MS. THOMPSON: Your Honor, with regard to this exhibit and probably the two that preceded it, there was an allegation that was made against the corporation initially that there was not enough land in the exchange areas. There has been virtually no testimony with regard to the exchange areas or quantity of land and I would suggest that the government is trying to get this memorandum in and the two that preceded it for inferences that were not supported by the testimony and to make an argument that will not really be supported by the evidence.

THE COURT: What is your theory?

MS. HYNES: Your Honor, the exhibits, two of the exhibits that the defendants have no objection to, one of them 885, is a business record of the company which sets forth exactly how many lots there are in these reserved areas and how many lots have been sold, so there is evidence when these are offered and there is no objection to them in the record as to how many lots are in the exchange area.

This is really the best evidence as to how many lots are available in the exchange area. These computer records also show how many lots have been sold, how many lots have been paid in full. So there is evidence and will be evidence in the record by the company's own computer printouts as to how many lots have been sold and how many lots are reserved for management as of a given date.

These memos that your Honor has just ruled on show that over the years lots in the reserved area when the inventory was tight or for whatever other situation were released and sold. The computer printouts given a final date there are, in fact, as of that date, which

I think is April 30, 1975, so there is evidence in the record and we submit it is really the best evidence of how many lots are available.

(Continued on next page.)

THE COURT: But that isn't the question that was raised by Ms. Thompson.

What is the relevance of that to this trial?

MS. HYNES: The relevance of that is that the whole point, particularly the whole point of cross examination, has been that everybody has this right to exchange into a building area, and the relevance is that if there are not enough lots available in the building area then that exchange privilege cannot be exercised.

The defendants have made the point of the exchange area.

MS. THOMPSON: Your Honor, our point very simply is --

MS. HYNES: We have also charged it in the indictment.

MS. THOMPSON: It has been charged in the indictment and there has been no proof at trial. This few documents is not the proof, but what is lacking and what is continuing to be lacking on the basis of what we know to be the tail-end of the government witness list is testimony that the exchange privilege will not work.

What we have are a series of numbers, and Ms. Hynes would choose to draw inferences from those numbers on the basis of theories which she has in her head, but there is no evidence to it, and we object to it on the grounds --

THE COURT: There is no evidence at all, after running this company for 12 or 14 years, that the exchange area has not met the demands made upon it. In fact, there is a surplus, as I gather, in the exchange area from the proof.

MS. HYNES: Your Honor, I don't disagree with that.

We stated, and I stated in my opening, that the company and the evidence at trial has been that the company did not expect everyone to move there.

THE COURT: That's right.

MS. HYNES: The point is --

THE COURT: And they were right, weren't they? The proof has --

MS. HYNES: They may be.

THE COURT: What experience do you need more than 14 years?

MS. HYNES: But, your Honor, this is a very critical point, because these defendants sold these lots --

THE COURT: I thought the whole purpose of this going in was to show that people were buying it for investment and not for -- that that was the intent.

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I thought that that's what it was coming in for.

MS. HYNES: Yes, yes. But there is another part to it.

THE COURT: The other part doesn't exist, because the evidence shows everybody that wanted to exchange got the exchange and there is a surplus of property there, so that point hasn't been proved, Ms. Hynes. I am telling you now you haven't proved it.

Let's go on to something else.

MS. HYNES: Let me just make one further argument on the investment aspect of it.

The lots, the evidence has shown, that were sold nationally, are unimproved lots. This is one area where I think your Honor has had a difference of opinion with respect to what the government is proving here.

The prices that were charged for these lots were to include utilities.

It is absolutely correct that when everybody bought these lots they knew that they were unimproved lots, but they had the expectation that utilities would reach those lots. That's what was represented to them, and the contract specifically says, "If utilities do not reach your lot at the time that you are ready to build, then you can trade in." But utilities were absolutely included in the purchase price.

People were not paying $10,000 for two acres of land thinking it was undeveloped land that would never have utilities. They were paying for utilities. They believed that the utilities would eventually reach their lots, if they didn't reach the lots only then the fall-back came in to be that half acre exchange into a building area.

But the point is the company has an obligation to provide utilities.

Now --

THE COURT: Have they failed in that obligation to date?

MS. HYNES: No, your Honor, but it is like a Ponzi scheme. You know, eventually the first ones in have gotten it. There is enough land set aside --

THE COURT: That would be true, Ms. Hynes, if you were talking about the first year. But you are now talking about after 14 years of operation and whatever their prognostication internally proved to be correct.

MS. HYNES: But, your Honor, this goes to the defendants' intent that they would never have to develop the entire subdivision and that the entire subdivision would not be developed, that they were selling it off,

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charging for utilities when they knew they would not have to put utilities into this undeveloped land that was sold off nationally.

THE COURT: A person who wanted to buy, if he ever wanted to come in and there were no utilities around, he could exchange.

MS. HYNES: A one half acre lot.

THE COURT: Right. He could exchange if he wanted to build.

MS. HYNES: To a certain point, if everyone decided --

THE COURT: And in 14 years, anybody who wanted to exercise that privilege was satisfied.

We are not going to sit here 25 years from now and say, well, it's still a scheme even though everybody has been satisfied.

MS. HYNES: Your Honor, there are several points and then I would like to have a moment to consult and then still argue.

THE COURT: Oh, no. Come on, there is no more argument, Ms. Hynes. Get your last point out.

MS. HYNES: Your Honor, the only investment value that this land has when you are charging the kind of prices that these defendants were charging was that you had utilities on their land. Correct?

I mean, otherwise it has no investment value.

If you are paying $10,000 and told that that price includes utilities --

THE COURT: I am sorry, you made a misstatement there. You say that there were utilities on the land.

There is no witness who took this stand and said there were utilities on the land and they expected it.

MS. HYNES: Then I did misspeak.

What I am saying is the only investment value that this land has is if it is improved with utilities, given --

THE COURT: That is not entirely true.

MS. HYNES: -- given the price that was paid.

But, your Honor, the defendants have made a point in cross examination that if somebody bought his land as an investment and wanted to resell it, they could resell it with this exchange privilege.

Now, if people who bought this land wanted to resell it with the exchange privilege, then it is important how many people can be exchanging into the building area.

THE COURT: That's right. And the 14 years experience is a pretty good rate, isn't it, to indicate what happened?

MS. HYNES: But, your Honor, you have to look that every contract carries an exchange right.

THE COURT: But in 14 years if only 3 per cent did it, isn't it proper to assume that's what you are ever going to get?

MS. HYNES: Then it is not proper to charge for utilities when they know they will not provide the utilities --

THE COURT: I am not sure about that. It may be for the jury.

This objection is sustained.

Next point. Next exhibit. 920 is out.

MS. CROSS: Your Honor, then, with reference to Exhibits 917 and 919, which I believe your Honor admitted under the erroneous assumption that they were being put in to prove that it was sold as an investment, it is now clear that the government's theory is put in --

THE COURT: I think it also comes in on Carity's knowledge. I let that in, too. But this last one is just cumulative for all that.

What is the next one?

MS. HYNES: Your Honor, on filings with the Office of Interstate Land Sales, we have certified copies and we are offering what has been stamped -- it is page 36, and it has a number stamp 1214, occupancy status.

THE COURT: Wait. What is the exhibit number?

MS. HYNES: The exhibit number is 430.

THE COURT: Yes.

MS. HYNES: We are also offering the signature page, which is signed by Howard Friedman on June 1, 1972, and that appears at page 1217.

THE COURT: This is Exhibit 430?

MS. HYNES: Yes.

THE COURT: And you are offering -- it is a registration statement?

MS. HYNES: It is a filing with the Office of Interstate Land Sales. It is called a statement of record.

THE COURT: And you are offering what pages?

MS. HYNES: I am offering page 1214, which is the number stamp on it, occupancy status.

It relates to the number of dwellings that are presently completed and the expectation of 80,000 dwellings.

THE COURT: That is all you are offering, page 1214?

MS. HYNES: The occupancy status, which is paragraphs A, B and C on that page, plus the signautre page.

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THE COURT: What is the objection?

MS. CROSS: The objection is that most of that page is cumulative to the 1972 offering statement which has been admitted into evidence.

THE COURT: Is it?

MS. HYNES: No, because it doesn't have -- basically, this is offered to show Howard Friedman's knowledge. It is a signed statement by Howard Friedman. The offering statement is not signed by Howard Friedman.

THE COURT: The objection is overruled.

XXX (Government's Exhibit No. 430 received in evidence.)

MS. HYNES: Your Honor, the next exhibit is 433, which is another filing with the Office of Interstate Land Sales. This one is signed by Chester Carity.

The signature page is stamped 2238.

MR. FLEMING: Do you have a page number, Ms. Hynes?

MS. HYNES: That is the page number.

There is a printed page numbered 50 at the bottom.

MR. FLEMING: Thank you.

MS. HYNES: And it is signed on April 25, 1969.

The government is offering page 2235, and there is a printed number 47 on it, again, occupancy status as of this date, your Honor.

We would offer it for the same reason, it is sgined by Mr. Carity, it says there are 330 dwellings, 65,000 dwellings are contemplated. Under occupancy status, we would offer A, B and C of that exhibit.

MS. CROSS: Is the government also offering the other pages we discussed last night?

MS. HYNES: No, I am not.

MS. CROSS: We would have the same objection of cumulation.

THE COURT: Same ruling.

XXX (Government's Exhibit No. 433 received in evidence.)

THE COURT: What else?

MS. HYNES: Your Honor, on 790, which is an offering statement, the government is offering -- it is an offering statement dated December 24, 1974, filed with New York State.

We are offering the prices, the charts on prices and distances on pages 4 and 5 which relate to commercial and residential lots.

These are the price ranges that are referred to in the indictment, and that is the reason for offering it.

MS. CROSS: Your Honor, our suggestion was tha it include all of paragraph 5 and not just start with the prices.

THE COURT: Let me see it.

(Handing to the court.)

(Pause.)

THE COURT: You are offering merely page 5, Ms. Hynes?

MS. HYNES: 5 and 6.

We had previously agreed, up until last night, the lead-in sentence on the previous page that says, "These are the prices for lots offered in New York."

MS. CROSS: The only reason we asked for the rest of that paragraph to be read in, your Honor, last night we were discussing with the government and we suggested that from those prices the government may attempt to argue that it was a lousy investment because people paid so much money.

The government won't agree whether or not they would argue that.

We suggested that then the resale disclaimer which is in evidence but not in connection with this property report be put in.

In other words, the jury has that resale paragraph in the 1969 offering statement.

The government is not offering the prices from the 1969 offering statement.

We just don't want to get the jury to get the idea that in 1974 they raised the prices and deleted the resale disclaimer, because it is in there.

THE COURT: I am a little lost here.

I gather you are starting with the top of page 5?

MS. HYNES: We are offering, yes, 5 and 6, the charts that show the range of prices.

THE COURT: What do you want added to this?

MS. CROSS: We wanted all of paragraph 5.

If you come back to page 4, I believe it is, you will see --

THE COURT: You mean lots are offered for all cash on an installment basis?

MS. CROSS: And on the next paragraph is the resale disclaimer.

THE COURT: You are going back to page 3, I think.

You better take a look at this and see what you are talking about.

MS. THOMPSON: No, your Honor. It begins with the numbered paragraph 5.

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MS. CROSS: Yes, it begins with the numbered paragraph 5.

The government asked us last night to put in pages 4 and 5.

I believe that's what you want, isn't it?

MS. HYNES: Well, I don't have it in front of me. Whatever pages have the prices on it is what I am offering.

THE COURT: Prices appear only on page 5.

At the bottom of page 5 it has a paragraph numbered 7 entitled "Income Balances."

Do you want that in?

Paragraph 8 on page 6 is "Taxes."

MS. CROSS: No.

Last night the government told us they wanted in both the tables on pages 4 and 5.

MS. HYNES: Yes, that is what we are offering, your Honor.

MS. CROSS: The tables on 4 and 5 the government wants in.

THE COURT: Right.

MS. CROSS: We suggest that it should start on page 3 with paragraph 5, "Offering," then go through the table on page 4, which the government wants in evidence, and then go on through page 5 just above "Income Balances."

THE COURT: You have had me looking at 5 and 6 and 4, now you tell me I should look at 3, so I will look at 3.

(Pause.)

THE COURT: I think the paragraph on page 3 ought to go in, Ms. Hynes.

MS. HYNES: I have no objection to offering the entire document --

THE COURT: That isn't the question, is it? We are just saying beginning with number 5.

I will let in paragraph 5, beginning on page 3, to number 6, ending on page 5.

XXX (Government's Exhibit No. 795 received in evidence.)

(Continued on next page.)

THE COURT: All right. What else?

MS. HYNES: Your Honor, the next exhibit is a property report dated May 8th of 1975 filed with the Office of Interstate Land Sales.

THE COURT: The number?

MS. HYNES: The number is 1002.

THE COURT: What is this being offered for?

MS. HYNES: Your Honor, we are offering on page 2 the warning which is stated in red, and on page 4, the bottom of page 4, the underlined portions which relate to the company's obligations with respect to community associations, pages 8, 9 and 10, the marked portions of it.

This, basically, relates to the company's obligations with respect to utilities, what the company intends to do and if there is not a lot in the building area available for exchange the cost involved in extending utilities to lots outside of the utilitied area.

THE COURT: What is the objection?

MR. LAUER: We object on relevance, your Honor.

This document is dated May 1975. It is subsequent to the FTC proceedings and it is subsequent to negotiations with HUD which required the company to make these representations, therefore, they are not the statements of the company.

THE COURT: What do you mean they are not the statements of the company?

MR. LAUER: HUD required --

THE COURT: They are your statements whether you are required to make them or not.

You mean to say when you comply with the SEC rules, they are the SEC statements and not the filers statements?

MR. LAUER: I don't believe they would have probative value as admissions.

THE COURT: Why not?

MR. LAUER: Because they are not really your statements.

THE COURT: Of course they are.

They wouldn't take your filing unless you make that statement. If you are not willing to make the statement, don't file.

MR. FLEMING: I think this may have been a situation where -- as I understand it, after the FTC filed this complaint, there was some ruling by HUD that they could not sell any more property, and then they required these representations in order to allow them to continue in business.

THE COURT: But they are your representations, they are not HUD's representations.

You have the choice. If you want to continue selling, you make the representations. If you don't want to make the representations, don't sell. But it is your representations, they are not, as your associate says, they are are HUD's representations.

HUD makes no representations to the public regarding what you are buying, you do or, rather, your client does.

MR. FLEMING: It is kind of rough, Judge.

THE COURT: The objection is overruled.

MR. FLEMING: I think the point is coerced.

THE COURT: Coerced how?

Nobody coerced from you. Either it is true or untrue.

If you are making a statement which you know is untrue --

MR. FLEMING: The SEC can make you do that, Judge.

THE COURT: That is right. And if it turns out it is untrue, you are in the soup, therefore, you should not make the statement if you know it is untrue, or put a caveat down, "HUD made me say this, but it's a lie."

Try it next time and see what happens.

MR. FLEMING: They will make you take it out before you can sell property.

MR. RUBINO: We will join them as defendants or conspirators.

THE COURT: All right.

(Government Exhibit 1002 received in evidence)

MS. HYNES: Your Honor, on 218-I, which is an annual report of the corporation in 1965 and 1966, we would offer the cover page and pages 4 and the first three paragraphs on page 5.

This is a message to the shareholders from Irving Blum and the signature by Irving Blum on page 6.

The portions that we are offering relate to Mr. Blum's statements with respect to Rio Rancho.

THE COURT: Let's see it.

(Handing to the Court)

MR. HOFFINGER: Your Honor, I object to it.

That is a statement to the shareholders and not to potential investors in Rio Rancho land or potential purchasers.

I don't see how it is relevant to this case, tjw 5

unless Ms. Hynes takes the position that the statement to the shareholders was a false statement.

MS. HYNES: No. It is offered to show Mr. Blum's knowledge.

THE COURT: It is Mr. Blum's involvement.

MR. HOFFINGER: Involvement in what?

THE COURT: As an officer.

MR. HOFFINGER: But he was an officer, your HOnor.

THE COURT: I know. What he knew and what he did and things he told publicly to shareholders.

This is a public document, isn't it?

MR. HOFFINGER: I understand that. But what I am saying is that just because he, as president the corporation, was signing an annual report to shareholders does not necessarily tie him into the allegations in this case.

THE COURT: It shows knowledge, involvement.

Objection overruled.

MR. HOFFINGER: Your Honor, in connection with reading that, may we have the same ruling as we had before that the jury will know that there are a number of pages of that document?

THE COURT: Yes.

MR. HOFFINGER: And it is signed AMREP Corporation by Mr. Blum, president, just the way it is signed.

THE COURT: Okay.

(Government Exhibit 218-I received in evidence)

MS. HYNES: Your Honor, I also believe there is an agreement that this annual report is mailed to shareholders.

MS. THOMPSON: Your Honor, Mr. Devorkin asked me for a stipulation to that effect and, of course, it is a fact that the annual reports are mailed to shareholders, but I fail to see the relevancy of that fact, what was sent to shareholders.

THE COURT: Publications, that it was not printed and kept in the back room.

MS. THOMPSON: We have admitted it is a public document. But the question of where it went, I think, is irrelevant.

THE COURT: It does not make any difference.

The next point?

What is your next point?

MS. HYNES: Your Honor, 1039 and 1039-A -- one is a letter from ATC Realty in May of 1967, the identical is from ATC Realty, which is 1039.

These are two letters that were used in this time period in 1967 and 1968 as the letters to confirm a sale after a sale was made.

This letter was mailed to the homesite owner.

MS. CROSS: Your Honor, our objection on this is these do not appear in the fiche of the company records, these records were obtained by the government, apparently, from the addressee of these letters.

First of all, we think they are cumulative.

Second of all, we would object without the witness coming in who received these letters.

MR. FLEMING: Can I add, your Honor, if these are sent to the purchasers after the purchase, they are totally immaterial. They cannot be an inducement.

THE COURT: Let me see it.

MS. HYNES: Your Honor, it is an inducement to continue to make the payments.

The ATC letter is in 1967. ATC is a defendant, and it states that in 1967 that Albuquerque is bursting at the seams and the letter --

THE COURT: Oh, my God, we don't need that.

MS. HYNES: But this is in a letter, your Honor, it is not in a script, it is a letter --

THE COURT: And this is the only letter in the entire 400 exhibits that says Albuquerque is bursting at the seams?

MS. HYNES: No. This is a letter in 1967, your Honor, because the timing is important, from ATC.

There has been testimony that the procedure, the standard procedure of the company was to send out a letter after a sale was made. The reason why we offered both of the letters is to show the practice, that it was sent out not only by ATC but sent out by another sales office, the identical letter and it is a letter confirming the sale in 1967 making the statement that Albuquerque is bursting at the seams, and that is a statement by the defendant ATC Realty.

THE COURT: You don't need that. Objection sustained; cumulative.

One thing this jury knows, Albuquerque is bursting at the seams. They don't have to be told it for the seventeen-thousandth time.

Go ahead.

MS. HYNES: The next exhibit, your Honor, is Government Exhibit 612, which is the initial purchase agreement for the 54,000 acres.

We would offer page 1, the first three paragraphs;

page 6, paragraph numbered 15; and the signature page.

MS. CROSS: Your Honor, could we have a minute, because this was not proffered to us last night by the government?

THE COURT: Yes.

Hold it.

What is the next one?

Hold that out for the time being.

MS. HYNES: Exhibit 806 are minutes of the special meeting of the board of directors on August 10, 1961.

We would offer the cover page showing who was present and also two pages that refer or that are stamped 058154 and 155, which refer to the acquisition of the tract of land being negotiated by Mr. Oberman and Mr. Hoffman.

MS. CROSS: Again, your Honor, we did not discuss this one last night.

THE COURT: All right, hold that.

MS. CROSS: What number was that again, Ms. Hynes?

MS. HYNES: 806.

813 is another exhibit that relates to the acquisition.

THE COURT: What is the next one?

MS. HYNES: That is 613.

THE COURT: What is the next one?

MS. HYNES: The next one is 542.

This relates to -- this is a letter from Dan Friedman to Ross Montegue of BTG Realty Corp. in June of 1971.

At the bottom of the first page it sets forth, again, Mr. Friedman's instructions that the sale is to be confirmed the morning after. It refers to this as company policy and also relates his visit to the sales office.

THE COURT: Don't we have that in already?

MS. HYNES: Well, this is BTG, which is --

THE COURT: What difference does it make? The testimony is that everybody who was selling had to abide by the same procedures.

MS. HYNES: Okay.

The connection here is that BTG was a tape that was played to this jury at a sales presentation at BTG.

THE COURT: But the jury has been told and the record is complete that everybody had to comply.

MS. CROSS: Your Honor, we would object, because our understanding is that 1971 BTG Realty sold

Silver Springs Shores.

MR. LAUER: Exclusively.

MS. CROSS: Yes.

THE COURT: Well, that is just another reason. Objection sustained.

MS. HYNES: The next exhibit is 898, which is an internal memo from Dan Friedman to Miles Lihn, who has been identified as a person who sold at the property, and it relates to Corrales Heights and an increase in price at Corrales Heights.

THE COURT: What is the point of the exhibit?

MS. CROSS: Your Honor, it is a relevancy objection.

The indictment charges that when people traded in they had to pay more money, and I believe that has not been sustained by the evidence.

The evidence is that there is an area where people can trade in on an even exchange and there is an area --

THE COURT: Not for a home site.

MS. CROSS: Yes, for a home site. Unit 16 you can trade into for an even exchange or Unit 11, and if you choose to trade into Corrales Heights youcan do that and get additional amenities, underground sewage and so on, and you pay more money.

I don't see the relevance of this document which talks about an increased additional payment that you make if you move into a premium area as opposed to taking the so-called even exchange which was available to customers.

THE COURT: I will let it in. We have heard one person testify to that effect on cross examination.

Specifically, he was asked, "Didn't you have to pay more money?"

He said, "Sure."

MS. CROSS: Which witness was that, your Honor?

THE COURT: I don't know. We have had forty-one witnesses, but I will get my summary out for you.

xx (Government Exhibit 898 received in evidence)

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THE COURT: What else?

MS. HYNES: Your Honor, the next exhibit is 746-A, which is again a memo from Dan Friedman to sales personnel.

THE COURT: What is the purpose of this?

MS. HYNES: Your Honor, this refers to appointments and in particular with Mr. Koniecki. It describes Mr. Koniecki and his function which is that of being a dynamic party speaker who intensifies excitement and selling power and sets forth what Mr. Koniecki's responsibilities will be in addition to Mr. Lloyd Simon and two other named defendants.

THE COURT: What do we need that for?

MS. HYNES: Your Honor, here again it is just an additional example of Mr. Friedman hiring people, sending them out into the field --

THE COURT: Don't you have enough of that? Sustained, cumulation.

MS. HYNES: Your Honor, the next exhibit that I have is Exhibit -- this one I think I have not shown to the defendants yet -- my notes reflect that on Exhibit 149-H your Honor ruled this exhibit in on November 9

THE COURT: 149-H?

MS. HYNES: 149-H, which is a letter from a customer and the response from the customer.

THE COURT: Not on November 9th.

MS. THOMPSON: Your Honor, this wasn't shown to us last night. Maybe we ought to withhold it for a moment.

THE COURT: I have no 149 series admitted.

MS. HYNES: The next exhibit is 686.

MR. FLEMING: Does your Honor have the document?

THE COURT: No.

MR. FLEMING: It refers to Silver Springs Shores. It is cumulative and I don't see its relevancy whatsoever.

THE COURT: It doesn't make any sense to me. Objection sustained.

MS. HYNES: Your Honor, the next exhibit is 717. This is an agreement signed by Howard Friedman. There is no dispute that that is Mr. Howard Friedman's signature. It is an agreement with Piedmont International which was the agent for sales internationally.

THE COURT: What do you need this for?

MS. HYNES: It shows Mr. Howard Friedman's knowledge and it sets forth the terms of that agreement on the international sales.

THE COURT: What difference does it make

as far as your case is concerned?

MS. HYNES: That this land was sold overseas and as an investment and we have testimony from people who bought overseas.

THE COURT: What do you need it for?

MS. HYNES: It shows Mr. Howard Friedman's knowledge and involvement in that.

THE COURT: I will allow it in solely to show Mr. Howard Friedman negotiated the contract period, that is all.

(Government Exhibit 717 received in evidence)

MS. HYNES: Your Honor, the next two exhibits we are offering are 692 and 694. These are letters from Daniel Friedman after visiting sales offices overseas and offer them to show Mr. Daniel Friedman's not only knowledge but his participation in the sales effort overseas.

MR. FLEMING: The same objection I had to the prior document regarding Mr. Friedman.

THE COURT: Let me see it.

(Pause)

MR. FLEMING: I don't think it establishes his knowledge or participation.

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THE COURT: How do you tie 692 in to Rio Rancho?

MS. HYNES: Your Honor, if I can have it back I might be able to do it with the next document. Your Honor, the government will offer 715, which is a memo from Dan Friedman which relates to allocations for various offices for Rio Rancho Estates and one of the offices is the Far East. Both of these documens refer to offices in the Far East, the previous documents, 692 and 694.

MR. FLEMING: I just don't see its relevance, your Honor.

THE COURT: It just shows the extent of his involvement.

MR. FLEMING: He was president in charge of sales. I don't know what it shows really.

THE COURT: I don't think we need it.

MS. HYNES: Your Honor, it does show the extent of his involvement. Piedmont was selling overseas but Dan Friedman got involved and visited.

THE COURT: Mr. Fleming points out he is vice president in charge of sales. What more do you need? He said he was vice president in charge of sales and he sat in New York and played a pinball machine. I assume he was doing his job and you already have in that you had sales overseas.

Next one.

MS. HYNES: Your Honor, the next two documents relate to company records concerning the forfeitures, the amount of forfeitures by the company. They are 956 and 957.

THE COURT: Yes.

MS. THOMPSON: They are irrelevant. The government's whole pitch is that we lulled people into continuing to make payments when they should have known enough to stop. The fact that some people stopped seems to be irrelevant.

THE COURT: What are you offering it for?

MS. HYNES: Your Honor, there will be testimony by a purchaser who purchased this land for investment, made efforts to resell, couldn't resell and ended up forfeiting a substantial amount of money.

The point is that persons faced no choice. The choice was either to continue the payments or to forfeit the entire amount of money that they had already paid in. The company has collected substantial amounts of money because of the forfeiture provision in the contract and we are simply showing how much they have collected in terms of forfeiture and there will be testimony that this witness forfeited a substantial sum of money. He couldn't sell it and the only thing left to do was to forfeit it.

THE COURT: Isn't the report pretty full now that unless you did this you had to forfeit?

MS. HYNES: But this shows the extent of what the forfeitures were.

THE COURT: What bearing does that have on the scheme?

MS. HYNES: Your Honor, if the only you could stop making payments on this was to forfeit all of the money thatyou had already paid, it is relevant to show the defendants' intent in putting that provision in the contract and having these people forfeit every bit of money that they paid.

THE COURT: Isn't that usual?

If it is a usual contract, that's the way things are sold installment-wise in this contract, how can you draw from that an intent to defraud? Then every business in the country is defrauding. That can't be your argument to the jury.

MS. HYNES: Your Honor, they have cross examined extensively on the ground the company didn't forfeit this time, the company didn't forfeit that time. The fact is that the company has forfeited and has collected substantial sums as a result of forfeiting.

THE COURT: I will let it in on that basis.

YXX (Government Exhibits 956 and 957 received in evidence.)

THE COURT: I suggest we have a short recess and bring the jury in and get some testimony in.

(Recess.)

(Continued on next page.)

(In open court; jury present.)

MR. DEVORKIN: The government calls Jack Morden.

XXX **JACK MORDEN,** called as a witness by the government, having first been duly sworn, testified as follows:

XXX DIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mr. Morden, would you please keep your voice up as loud as possible so that everybody in the courtroom can hear you.

How old are you?

A 48.

Q Do you have a family?

A Yes.

Q A wife?

A Yes.

Q How many children?

A Three.

Q What are their ages?

A 23, 19 and 6.

Q Where were you born?

A Poland.

Q Keep your voice up, please.

Are you a United States citizen?

A Yes.

Q When did you come to this country?

A 1963.

Q What do you do for a living?

A I'm in business.

Q What kind of business?

A Clothing store, retail.

Q Are you self-employed?

A Yes.

Q Does your family work in the store?

A Right.

Q Where do you live?

A 208-32 15th Drive, Bayside, Queens.

Q Is your store in Queens, too?

A Yes.

Q Do you have any lots at Rio Rancho Estates?

A Yes.

Q What kind of lots and how many?

A Two acres of residential and four lots of business.

Q Commercial lots?

A Commercial lots.

MR. RUBINO: Excuse me, your Honor. Can we press the witness to keep his voice up? We can't hear him.

THE COURT: Keep your voice up. Everybody has to hear you.

Q Throw your voice back here as loud as you can so we can all hear.

A Yes.

Q Which lots did you buy first, the residential or the commercial?

A The residential.

Q And when was that?

A In 1968.

Q Did you buy those lots at a dinner?

A Yes.

Q Where was the dinner held?

A In some restaurant. I don't remember?

Q Here in New York City?

A New York City.

Q Did you see films at the dinner?

A Yes.

Q Did you go alone or were you with your wife?

A I was with my wife.

Q Did you hear a speaker at the dinner?

A Yes.

Q Let me show you Government's Exhibit 122-C for identification (handing).

Look at the yellow sheet of paper. I ask you if you recognize it.

A Yes.

Q What is it?

A Contract.

Q Is that the contract you signed that first night?

A Right.

Q Is that your signature?

A Yes.

Q The name here is different than your name now, correct?

A Yeah, because I shorten after I received citizenship.

Q Okay.

That is your wife's signature there, too?

A Yes.

MR. DEVORKIN: At this time I offer the yellow sheet that is part of 122-C.

MR. ARKIN: No objection.

XXX (Government's Exhibit No. 122-C received in evidence.)

Q Mr. Morden, are these other documents that are part of 122-C documents you received from Rio Rancho Estates?

A No, only this.

Q Take a look at the rider attached to the top.

A Yes, this also, I think.

Q Yes?

A Yes.

Q And this last sheet?

A Yes, this.

Q Would you look at this fourth sheet and see if you can identify that?

A Yes, this I received.

Q Do you know when you received that?

A I don't remember exactly at this time.

MR. DEVORKIN: I would just offer the three sheets.

MR. FLEMING: May I see the other document?

MR. DEVORKIN: Yes (handing).

(Pause.)

MR. FLEMING: I have no objection to these.

MR. DEVORKIN: May I just read from the contract, your Honor?

THE COURT: Yes.

(Mr. Devorkin read from Government's Exhibit

122-C in evidence to the jury.)

Q On this document there is a portion which says -- tell me if I am correct -- "We acknowledge receipt of a copy of the restrictive covenants and public report, offering statement or prospectus applicable to the lots."

Is that correct? Is that what that says?

A That's correct, yes.

Q Do you recall receiving a public report, offering statement or prospectus applicable to these lots?

A I -- maybe I may have. I don't remember.

Q You don't remember receiving one?

A No.

Q When you bought your lots, did you know that they were undeveloped land, the particular lots you were buying?

A Yes.

Q And for what purpose did you buy your property?

A I bought for investment.

Q What do you mean by investment?

A In the future maybe for the old age to have some income, resale.

Q Did you ever plan to move out to Albuquerque?

A No.

Q Were you told anything at that dinner about reselling your property?

A I told -- no. They told me to hold onto this because always the property go up in price.

Q Did anybody say anything to you about reselling it in the future?

MR. FLEMING: I object to the form of the question.

THE COURT: Sustained.

Q Was anything said to you about resale?

MR. FLEMING: I object to the form of the question.

THE COURT: Sustained.

A They told me about --

THE COURT: Wait.

Q Mr. Morden, what else was said to you by your salesman, if anything?

A Any time you want to sell, we going to help you to sell, to resell.

MR. ARKIN: If your Honor please, may we have the "they" specified; whether it is "they" or any one person?

Q Who made that statement to you, Mr. Morden, if you recall?

A The representative what --

THE COURT: Is he the gentleman sitting at the table with you?

THE WITNESS: From the company.

THE COURT: Was he the gentleman sitting at the table with you?

You went to a dinner?

THE WITNESS: Yes. Was a lady.

THE COURT: There was a lady sitting at a table?

THE WITNESS: Yes.

THE COURT: Was she the one that told this to you?

THE WITNESS: Yes.

Q Had you ever invested in anything else?

A No.

MR. ARKIN: Objection.

THE COURT: Overruled.

Q Did you have any money in the stock market?

MR. ARKIN: Objection.

THE COURT: Overruled.

A No.

Q Beside Social Security, did you have any pension plan?

MR. ARKIN: Objection.

THE COURT: Overruled.

A No.

Q WNen did you intend to sell the property you bought that night?

MR. ARKIN: Objection.

THE COURT: Sustained.

He said he bought it for investment.

MR. DEVORKIN: I understand. I want to get some idea when he intended to resell it, your Honor.

MR. FLEMING: He said he bought it for his old age.

THE COURT: Sustained.

Q Did you go to any dinners after that?

A Yes.

Q About how many?

A About two or three times.

Q For what purpose did you go to those dinners?

A They invite me to come to the dinner.

Q Were you told anything about your property at those dinners?

A I told I bought the property and I don't know yet what going on.

Then they told me to maybe you want to make a trip over there, and I went in 1971.

Q Before you made the trip, did anybody at the dinners you went to tell you anything about your lots?

A Yes. They told me always the property's more value, every year -- every time when I see them, they always told me they developed a lot and now is new buildings and new -- how do you call this? Golf club went up and a shopping center and always they make sure they do something for the development.

(Continued on next page.)

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Q Did you visit Rio Rancho?

A Yes, 1971.

Q Did you go alone or on a tour?

A On a tour.

Q It was a company tour?

A Yes.

Q Did you go with your wife or did you go alone?

A Alone.

Q How many days did the tour last?

A I think four days and five nights.

Q Did you get to see your property?

A Yes.

Q Were you taken around Albuquerque?

A Yes.

Q Did you go up on that tramway up in the mountains?

A Yes.

Q When you went up in the mountains, did you see any vacant land in Albuquerque outside of Rio Rancho?

A Yes, was plenty land.

Q Were you told anything by the Rio Rancho people about that vacant land?

A Yes. We ask them, "Why this is development and not other land?"

They said they have Indian reservations some land, some land government land and some they cannot develop because close to the mountains. This is what the answer.

Q Did you see your lots in Unit 13 at Rio Rancho?

A Yes.

Q About how far were they from the golf course?

A About a mile.

Q Did your lots have electricity or water?

A No.

Q Any telephone lines on your lots?

A No.

Q You lot was undeveloped, I take it?

A Yes, undeveloped.

Q Did your sales person say anything to you about when development was going to reach your lot in Unit 13?

A They told me it was going to take about three to four years before they come to this lot.

Q Did you buy any other property on that trip?

A Yes.

Q What kind of property?

A They offered me commercial property.

Q What unit were they in?

A Unit 25.

Q Did they take you to see those lots?

A Yes.

Q They were also undeveloped?

A Undeveloped.

Q Before you bought those commercial lots, did your salesman say anything to you about when those lots would be developed?

A Yes. They told me is going on every single day, come out one house they give to people and if going to go like this, going to take five to six years and we going to build a shopping center.

Q In Unit 25?

A 25, yes.

Q Did your salesman say anything to you about reselling those lots?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

A I ask him --

Q No, you can't answer that question.

THE COURT: Wait.

Q What else, if anything, did the salesman say to you at that time?

A I ask him, "How long you can make some profit from this land?"

He said, "The development going to go very fast and then we going to start build and you can rent the land to some builders and then you can have income later."

This what --

Q Was anything said to you about the growth of Albuquerque at that time?

A Yes. They told me the only place where can be developed only in Rio Rancho.

Q Let me show you Government Exhibit 122-B for identification (Handing).

Do you recognize this?

A Yes.

Q What is it?

A Contract.

Q Is that the contract for your commercial lots?

A Yes.

Q Is that your signature and your wife's signature?

A This is my signature and I -- this is the second also my signature.

Q You signed your wife's signature?

A Yes.

MR. DEVORKIN: I offer 122-B.

MR. ARKIN: No objection.

(Government Exhibit 122-B received in evidence)

MR. DEVORKIN: May I read a portion of it, your Honor?

THE COURT: Yes.

(Mr. Devorkin read from Government Exhibit 122-B in evidence to the jury)

Q Mr. Morden, on this document, also, there is a portion which reads, "I acknowledge receipt of copies of the restrictive covenants, the property report filed with the Office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development, and any applicable public report, offering statement or prospectus required by state authorities," and then there are initials there.

Do you recall receiving any of those documents when you signed this contract?

A No.

Q Do you recall what, if anything -- withdrawn.

Let me show you Government Exhibit 122-W for identification, and ask you if you can recognize it (handing)

A Yes.

Q What is it?

A A record of property visitation.

Q Did you sign this when you bought your commercial property?

A Yes.

Q Was that before or after you signed your commercial contract?

A I think before.

Q Take a look at this part here where it has some numbers beneath your signature (indicating).

A Yes, this is the numbers of the lots.

Q Of the commercial lot?

A Commercial lot.

Q Does that refresh your recollection about whether you signed this before or after you bought your commercial lots?

A I don't recall.

Q You don't remember?

A No. This was in the same day.

MR. DEVORKIN: I offer 122-W.

MR. ARKIN: No objection.

(Government Exhibit 122-W received in evidence)

MR. DEVORKIN: May I read from a portion of this, your Honor?

THE COURT: Yes.

(Mr. Devorkin read from Government's Exhibit 122-W in evidence)

Q After you bought that commercial property, did you ever fall behind in your payments?

A Yes.

Q Did you ever receive any letters from the company with respect to that?

A Received, yes.

Q Did you receive more than one letter?

A More, a lot more.

Q Let me show you Government Exhibit 122-L for identification (handing).

Do you recognize that letter?

A Yes.

Q Keep your voice up.

A Yes.

Q Who did you receive that letter from?

A Rio Rancho.

MR. DEVORKIN: I offer 122-L.

MR. ARKIN: No objection.

(Government Exhibit 122-L received in evidence)

xxxx

MR. DEVORKIN: May I read that, your Honor?

THE COURT: Yes.

(Mr. Devorkin read from Government Exhibit 122-L in evidence to the jury)

Q After you got that letter, did you make the payments that were due to the company?

A Yes.

Q Were there other times that you fell behind in payments and got similar letters?

A Yes.

Q You made your payments due after you got those letters?

A Yes.

Q Did you ever try to resell your property?

A Yes, I tried to resell, and --

Q What did you do?

A I call up the company. They have an office in New York City. And they told me only I can't resell, to go over there and to offer to the local real estate.

Q To go over where?

A To Albuquerque.

Q Do you recall when this was that you went to the New York office of the company?

A When was this?

Q Yes.

A I think in 1972.

Q Did you go into the office or was this by phone?

A No, I was in the office, too.

Q Do you recall who you spoke with?

A I don't remember the name, no. I know these people.

Q Did you try to resell your property after that?

A No. I didn't have a chance.

Q Let me show you Government's Exhibits 122-X and Y for identification (handing).

Do you recognize them?

A Yes.

Q What are they?

A This checks what I sent for the property.

Q For your contracts that have been identified here?

A Right.

Q And when these checks were sent into the company, where were they sent?

A To Chemical Bank.

Q Here in New York?

A New York.

MR. DEVORKIN: I offer 122-X and Y.

MR. ARKIN: Fine. No objection.

(Government Exhibits 122-X and 122-Y, respectively, received in evidence)

MR. DEVORKIN: Your Honor, may I just read the checks to the jury?

THE COURT: You don't have to.

MR. DEVORKIN: Can I just give them the dates?

THE COURT: You don't have to.

Q Your monthly payments were always about $300?

A Right.

Q Did there come a time when you stopped making payments on one of these contracts?

A I stopped making payments when I heard in the newspaper something, they are going to sue the company or something, the president.

Q When was that?

A Five months ago.

Q Are you still paying on one of the contracts?

A No, I stopped.

MR. DEVORKIN: May I just have a moment, your Honor?

(Pause)

Q Mr. Morden, when you went into the New York offices of the company and you were referred to local realtors in Albuquerque, what exactly were you told at that time?

MR. FLEMING: Objection.

MR. ARKIN: Objection.

THE COURT: Overruled.

A They told me don't worry, the brokers always go up and later on you are going to have a good income.

Instead of his they offered me more land. I didn't go for this any more.

Q Did they refer you to any specific brokers in Albuquerque?

A No.

MR. ARKIN: May we know who is this "they".

THE COURT: In the office, he doesn't know the name.

MR. DEVORKIN: I have no further questions, your Honor.

THE COURT: Cross examination.

CROSS EXAMINATION

XX BY MR. FLEMING:

Q You testified that you called the company in 1972 to attempt to resell your property?

A Yes.

Q Did you attempt to sell your residential property at that time?

A All, yes.

Q All of your property?

A Yes.

Q No question about that?

A No question about that.

Q Do you recall receiving a questionnaire from the prosecutor, I am referring to 3579-A for identification, which was turned over to us by the prosecutors, do you recall receiving a questionnaire from the prosecutors in connection with this case?

A Yes.

Q Do you recall you received that sometime in 1975?

A I think so.

Q Do you recall Question 16 and your answer thereto:

"Have you tried to resell your land?

"A No."

A I don't understand.

Q Were you asked this question on the questionnaire and did you give this answer:

"Question 16: Have you tried to resell your land?"

"Answer: No."

A Of course I tried to resell it.

Q When you were asked the question on the questionnaire which you received in 1975:

"Q Have you tried to resell your land?"

Did you answer: "No"?

A I don't remember.

MR. DEVORKIN: Your Honor, could Mr. Fleming also read Question 21.

MR. FLEMING: I am just getting to that. 16 comes before 21, Mr. Devorkin.

(Defendant Chester Carity and Daniel Friedman Exhibit FK marked for identification)

:XXX

Q Let me show you what has been marked FK for identification.

Do you recognize that as the question that was received and filled out?

A Yes.

Q I direct your attention to Question 16 and would you read the question and the answer to yourself?

A Have you --

Q No, to yourself.

A Yes.

Q Does that refresh your recollection that you were asked have you tried to sell your land and that you answered no?

A I don't remember.

Q You don't remember?

A I don't remember this.

Q Were you asked this question, additional question, Question 21, and did you give the following answer:

"Did you seek assistance from the company to resell?

"A Yes, but they refused. I wanted to resell the commercial property recently, but they refused."

A Right.

Q You remember that?

A Yes.

Q This was in 1975?

A Yes.

Q You said you were trying to sell your commercial property.

A Yes.

Q Only your commercial property?

A Both of them.

Q Did you say both of them or did you say commercial property?

A Commercial first and then the other one.

Q Did you answer the question commercial property or did you say both?

A Commercial.

Q Nothing about residential there, is there?

A Yes.

Q There is nothing about residential there?

A No.

Q You said recently, did you not?

A I don't understand that.

Q YOu said you attempted to sell your commercial property recently, have I read correctly?

A All the time, not recently.

Q Were you asked the question:

"Did you seek assistance from the company to resell?"

And did you answer: "Yes, but they refused. I wanted to sell the commercial property recently"?

A Right.

Q This was in 1975?

A Right.

Q On your oath you made that request in 1972?

A Right.

Q And that included not only commercial but residential?

A Residential, too.

Q Exhibit 1222 is your contract to purchase two acres.

A Right.

Q And this was your first purchase?

A First purchase.

Q May 20, 1968, is that right?

A Right.

Q Mr. Devorkin asked you if you remembered receiving a public report, offering statement or prospectus, is that correct?

A Yes.

Q And you don't recall?

A I don't recall.

Q It is true, is it not, that your initials JM and your wife's initials SM appear?

A Appear when we make the contract.

Q You put your initials there when you made the contract?

A That is what they told me to put our initials and we did.

Q Did you read that paragraph before you put your initials in?

A Maybe I read but I don't understand so well what it mean.

Q What part of it did you not understand?

Read it aloud and tell me what you didn't understand.

Read the paragraph that you initialed beginning "I/we acknowledge," read that out loud and tell me what you did not understand.

A If now I read maybe I understand. At this time I didn't understood in this time. This is many years ago.

Q Did you ask your salesman what it meant?

A The salesman tell me, don't worry everything is all right, everything is taken care of. That is what his answer was. Believe me.

MR. FLEMING: May that be struck, if your Honor please.

MR. DEVORKIN: That is responsive, your Honor.

THE COURT: Strike his answer.

Q When you were unable to understand what the paragraph "We acknowledge receipt of a copy of the restrictive covenants and the public report, offering statements or prospectus applicable to the lots"and placed your initials there, did you ask your salesman what that paragraph meant; that paragraph?

A No.

Q You went to Rio Rancho, is that right?

A Yes.

MR. FLEMING: I withdraw that.

Q After you bought the land in 1968 you went to several dinners thereafter, did you so testify?

A Yes, I went to several dinners.

Q You say you were told things about the development of Rio Rancho.

A Yes, and I saw films about the development.

Q Then you went down there in 1971?

A Right.

Q You were actually there in New Mexico?

A Yes, sir.

Q At Rio Rancho?

A Yes.

Q And they took you on a tour?

A Yes.

Q They let you look out the windows of the car?

A Yes.

Q They treated you --

A I was not a prisoner.

Q You bought more land?

A Yes, I bought more land.

Q This contract 1226 in evidence, dated February 13, 1971, the contract which you signed for the purchase of that land?

A Yes, this is the contract.

Q Again next to your initials JM and then the initials SM, did you put your wife's initials in?

A Right, she was not with me.

Q Your initials and your wife's appear next to the acknowledged receipt of copies of the restrictive covenants and et cetera?

A Correct.

Q Did you understand it by that time?

A I understand, yes. I never received.

Q You understood what you were signing but you did not receive the documents, is that correct?

A Correct.

Q Did you, in fact, recommend Rio Rancho Estates to your friends?

A No.

Q On your oath?

A What? I don't understand.

Q Did you recommend to any of your friends --

A No.

MR. FLEMING: Defendants Chester Carity and Daniel Friedman Exhibit FL marked for identification?

Q Do you recall receiving this letter from Rio Rancho?

A Yes, I recall receiving it.

Q Did you not in fact recommend Rio Rancho to your friends?

A I came with my friend to a meeting and they refused to purchase. That's all what I know.

Q You took friends of yours to a Rio Rancho dinner?

A Yes.

Q You were asked to a dinner and you took some friends to the dinner?

A I took some friends to the dinner and they didn't bought nothing.

Q Did you tell them when you took them to the dinner they might be interested in what would happen at the dinner?

A They have their own mind. I told them listen and do what you want, that's all.

Q They listened, right?

A They listened to the people who provide the dinner.

Q And the dinner was like the other dinners you attended, was it not?

A Right.

Q Just about identical, is that right?

A Yes.

Q The same thing happened, same film, same statements?

A Same statements.

Q The salesman talked to your friends?

A Yes, they talked to everybody.

MR. DEVORKIN: Could we get a date on this dinner, your Honor, when this was?

THE COURT: When was it? When did you take your friends to this dinner?

THE WITNESS: I don't remember.

Q It was sometime between your first purchase and your visit to Rio Rancho, am I correct?

A Yes.

Q To go back to it, you invited your friends to go to the dinner, is that correct?

A There was a neighbor of me.

Q You asked your neighbor if he would like to go to your dinner with you?

A Yes.

Q You told him what the dinner was about, is that right?

A Yes.

Q And he went to the dinner?

A Right.

Q Did he take his wife?

A Who?

Q Your friend.

A Yes, he take his wife.

Q They saw a film as you had seen a film?

A Right.

Q And they heard a speech as you had heard a speech?

A Right.

Q And they were spoken to by a salesman as you had been spoken to by a salesman?

A Right.

Q And they decided not to buy any land?

A No.

Q They weren't thrown out of the dinner, were they?

A No.

Q In April of 1970, did you travel to Russia for a few months?

A No.

Q Did you ever tell the company that you traveled to Russia for a few months?

A No.

Q Did you have a robbery in your home in 1967?

MR. DEVORKIN: I didn't understand the question.

THE COURT: Did he have a robbery in his home in 1967.

MR. DEVORKIN: I don't see how any of this is relevant, your Honor.

THE COURT: We don't know yet.

MR. DEVORKIN: May we have an offer of proof?

A No, I don't recall it.

Q Did you ever tell the company that your home had been robbed?

A Maybe the business, not the home.

Q Did you ever tell Rio Rancho that you had suffered a robbery and therefore you would be delayed in making your payments?

A This was the business robbery, not home.

Q Did you ever tell Rio Rancho that you had been on a trip to Russia for a few months and therefore had fallen behind in your payments?

A I was not. It was my wife.

Q Your wife was in Russia for a few months?

A Right, because her mother was dying and she went there.

Q I understand.

You testified that you are presently 40 years old?

A Yes.

Q Did you testify that in 1968 when you purchased the property you purchased it for your old age?

A Right.

Q In 1968, if I am correct, you were 32 years old?

A What?

Q You are 40 years old --

A 48.

Q Excuse me.

A 48.

THE COURT: 48 years old.

Q You are 48 years old now?

A Yes.

Q You were 22 years old when you purchased it in

1968 and it was then that you purchased it for your old age?

A Right.

Q You testified when you were in Albuquerque on the trip, they took you around the city of Albuquerque, is that right?

A Right.

Q Did you see vacant lots in the city of Albuquerque?

A In the city, yes.

Q Did anyone tell you that the Indians owned those vacant lots?

A In the city?

Q Yes.

A I don't recall in the city.

Q Did you ask any questions about the vacant lots in the city?

A How do you describe the city? In the metropolitan area?

Q In the metropolitan area.

A We was passing the city, that's it.

Q Did you see vacant lots in the metropolitan area?

A Yes, we saw vacant lots. There was tractors working cleaning and everything. What did it have to do with me.

Q You were on a bus?

A On a bus.

Q With all the people on your tour?

A Some of the people, not all of them.

Q There were a number of people on the bus?

A Right.

Q They took you through the city and you saw vacant land and you saw tractors on the vacant land?

A Right.

Q You say you stopped paying on your property or some of your property about four or five months ago?

A Yes.

Q Was that when you heard about the indictment in this case?

A Right.

Q Has your money been forfeited by the company?

A Yes, they sent letters.

Q Has the company taken your money because you have refused to make payments?

A No, they didn't took the money.

Q As a matter of fact, has not the company since 1968 sent you approximately 22 notices called final notices that if you don't pay we are going to have to forfeit your property?

A I don't know how many. They send, yes.

Q About 22, would that sound about right?

A I don't recall how many.

Q They never forfeited your money, did they? They never forfeited your property, did they?

A I don't understand this.

Q You still own the property, don't you?

A Yes, I still own the property.

Q They sent you about 20 final notices and you made payments and you still owned the property?

A Yes.

Q You stopped paying about five months ago and you still own the property?

A Of course I still own the property. I don't know what's going on there but I want to know.

Q You stopped paying when you heard about the indictment?

A Right.

THE COURT: We will adjourn for lunch, return at 2:00.

)Luncheon recess.)

AFTERNOON SESSION

2:00 p.m.

In open court in the absence of the jury.)

THE COURT: Yes?

MR. KAUFMAN: Your Honor, we have a matter which appears as if it is going to throw off our scheduling a little bit.

We had in New York a witness by the name of Bruce King. This was last week.

Bruce King was going to testify very simply about the sale of his land to Rio Rancho between 1969 and 1971 and testify that he negotiated with Herman Oberman with respect to that transaction.

Last week the government entered into a discussion with Mr. Rubino with respect to the possibility of entering into a stipulation to the fact that Herman Oberman did negotiate with Bruce King for the purchase of the additional acreage in the years between 1969 and 1971.

Bruce King last week was sent home; obviously he didn't testify.

We have been told today for the first time that Mr. Rubino will not enter into such a stipulation, despite the fact that as recently as yesterday he told us that there would not be a problem, it was just a matter of working out the language, and at this time we now find ourselves forced to get Mr. King back here in New York.

He resides in Albuquerque. He is now in Witchita at a meeting of the Federal Farm Credit Bureau Bank and he is there with his wife. I spoke to him over the luncheon recess.

He believes it will be impossible for him to get here to New York by tomorrow in order to testify, and it appears as if he won't be able to be here until next week.

THE COURT: Tuesday?

MR. KAUFMAN: Well, hopefully Tuesday.

THE COURT: Oh, yes, Tuesday. It is going to stop Tuesday.

MR. KAUFMAN: We want to stop tomorrow, your Honor. This obviously was an unanticipated problem. I thought we had a stipulation for it.

THE COURT: Therefore, he is here Tuesday morning.

MR. KAUFMAN: If he can get airline reservations, your Honor.

THE COURT: Give him a subpoena to get it.

MR. KAUFMAN: A subpoena won't help him get an airline reservation.

THE COURT: The day is Tuesday. He has a whole week to get it.

MR. KAUFMAN: I understand, your Honor.

THE COURT: And he can get here in a week.

MR. KAUFMAN: I hope so. It is the holiday --

THE COURT: He can get here in a week.

MR. KAUFMAN: I just wanted to bring this up as a problem --

THE COURT: I am telling you, with a week's notice he can get here. If he has to walk he can get here with a week's notice.

MR. KAUFMAN: I just wanted --

THE COURT: If he wants to wait until he can get here Monday because that's his convenience, that doesn't suit the court.

MR. KAUFMAN: I understand.

THE COURT: He will be here Tuesday or you will close without him. It is a week's notice. He can walk here, he can take a bus here.

MR. RUBINO: I just wish to correct some misstatements that Mr. Kaufman made.

The first time Ms. Hynes asked me whether I would consider a stipulation, I said I am seeing my client on Saturday morning, at which time I would discuss it with him.

I telephoned with respect to that stipulation, I telephoned Ms. Hynes on Friday. She wasn't in her office. I telephoned again on Saturday, she wasn't in her office.

On Sunday she called me at home. Among other things, I asked to see the grand jury minutes, which at that stage she said she could not show me.

I asked her yesterday morning for the grand jury minutes. She said she had forgotten them in her office.

She showed me the grand jury minutes for the first time last night after 5:00.

I told her then that I would take it up with my client and try to work out a stipulation which I thought would cover the facts. I find that I cannot do that.

I just wish to correct the misstatement of fact that for the first time they heard that I was not going to stipulate.

THE COURT: All right.

MS. HYNES: Your Honor, I have one other matter.

I was advised this morning by Ms. Thompson that we have been trying to get a stipulation with respect to the various corporations and the offices which the various defendants held in these corporations.

From time to time during the trial, when we went to offer any kind of testimony with respect to who was an officer, for example, for Carity-Hoffman, your Honor sustained an objection saying it will be covered by the chart.

We have proffered a chart that would cover the three defendant corporations plus Carity-Hoffman Associates, and Ms. Thompson tells me they will not enter into a stipulation on that.

We have also asked for a stipulation on AMREP International, which is the corporation that sold internationally, as to the officers and directors. They will not enter into a stipulation on that.

The same with respect to BTG Realty Corporation, which is a wholly-owned subsidiary and is the corporation that we have the tape in evidence, AMREP Construction Company and Albuquerque Utility Company, which is the water company, and also Double R, though I am informed that they will enter into a stipulation with respect to Double R.

Roth Realty and SGR Realty are also two other wholly-owned subsidiaries which there has been testimony on at the trial.

If we do not have a stipulation, we can offer documents, but we have been precluded from offering documents on the basis of our understanding and the court's understanding that this could be covered by a stipulation and by a chart.

THE COURT: I thought the stipulation only went to the positions that the defendants held in the three named corporations. That was my understanding.

MS. HYNES: Your Honor, specifically with reference to Carity-Hoffman Associates, your Honor ruled that that would be covered by the chart and that was my understanding from that point on.

The only corporations --

THE COURT: I think at the time I made that ruling back in October I was referring to the individual defendants'standing in the three named corporations.

MS. HYNES: No, I am talking about testimony that I sought to elicit during the course of the trial after --

THE COURT: I don't know the necessity for Carity-Hoffman, I still don't, but the stipulation that you are referring to that you said was made in front of me was in October it referred solely to the individual defendants and the three named corporations.

MS. HYNES: Your Honor, we did seek to offer documents as to the officers of the other corporations who have been mentioned here, the corporations that have been mentioned, and they have been ruled out on the basis that they would be covered in a chart.

THE COURT: What do you need them for?

MS. HYNES: For example, Double R Realty there is already an agreement.

On the others, for example, Carity-Hoffman Associates, there is testimony that that is the in-house advertising agency, so it is very relevant who the corporate officers of Carity-Hoffman Associates are.

THE COURT: Why? The relevance is, did any of the defendants order the material.

They did the printing, as I understand it.

MS. HYNES: The fact that Howard Friedman was the president and director of Carity-Hoffman Associates which created the advertising and Solomon Friend was the vice president, secretary and director of Carity-Hoffman Associates which created the advertising and that Chester Carity was a director of Carity-Hoffman Associates is relevant, particularly with respect to Mr. Friend --

(Continued on next page.)

THE COURT: What do you mean created the advertising? Printing is what I understand it.

MS. HYNES: No. Your Honor, it was clarified on the record and the record is very clear they created it.

Your Honor asked the question, "Are you talking about printing or are you talking about creating it," and the testimony has been that Mr. Carity and Mr. Hoffman were the individuals who created the advertising, and this was done through Carity-Hoffman Associates.

THE COURT: You don't need Carity-Hoffman if you say there is proof in the record that Carity and Hoffman did it.

MS. HYNES: But Carity-Hoffman Associates is the company through which the in-house advertising company where Mr. Howard Friedman was the president and director and Mr. Solomon Friend was the vice-president and a director of that, and given your Honor --

THE COURT: There is no necessity for it.

MS. HYNES: Your Honor, the necessity for that is that it ties Mr. Friend and Mr. Howard Friedman into the company that actually created the advertising.

Your Honor has stated --

THE COURT: Now, come on. If I am Mr. Batten of Batten Barton Durstein & Osborn, you don't think that I know everything the concern did.

MS. HYNES: You are the president?

THE COURT: Yes, of course. If I am the president of Batten Barton Durstein & Osborn, I am not responsible for everything my firm created; obviously not.

Now, you have Carity and Hoffran in, you say, as the ones who did the creation; they are in. But that does not bring Friend and the other fellow in.

MS. HYNES: Your Honor, that is inconsistent, then, with your rulings when we offer evidence on Dan Friedman being vice-president of sales, yiu say he is vice-president of sales, he is chargeable with what he does as vice-president of sales.

THE COURT: In this, yes, because the corporation is a defendant here. That's why.

Have they refused to stipulate with you the positions that each of the individual defendants have held in the three defendant corporations?

MS. HYNES: Not so far, your Honor, no.

THE COURT: Where is it?

MS.HYNES: We are still working on that and the stockholdings.

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The basic difficulty is the stockholdings that is holding up the chart. We will have the chart ready, though.

THE COURT: All right.

But that was the stipulation that I thought was entered into. It was the relation, as I recall, to the filing of regulation statements and registration statements, and we said we would have a chart, we didn't have to put these in for every year, you would make a chart up, and that was the purpose of it.

MS. HYNES: Okay.

Then, your Honor, I would just like to offer a page of an SEC filing that shows what the subsidiaries of this company are, and that is on Government Exhibit 410, page 22.

THE COURT: This is to get in the officers and directors of the corporation? The objection is sustained.

MS. HYNES: No, it is not.

THE COURT: What is the purpose of it?

MS. HYNES: To identify what these corporations are and that they are wholly owned subsidiaries, not who are the officers and directors?

THE COURT: Who? Carity-Hoffman you had testimony from the stand on. That takes care of Carity-

Hoffman. Who else do you have to bring in?

MS. HYNES: Let me just be sure that we are still stipulating on RR.

MS. THOMPSON: No.

MS. HYNES: Well, your Honor, we went to offer records on RR.

RR was the company that was thelisting company the multiple listing service and when we went to offer the record of who RR --

THE COURT: That comes in.

What else?

MS. HYNES: BTG Realty Corporation of Buffalo.

THE COURT: Who are they?

MS. HYNES: They are a wholly owned subsidiary.

THE COURT: What difference does it make as long as you had the tape in?

No subsidiary, no independent broker, no wholly owned group could show anything except what came out of AMREP. That's the testimony and that is the basis upon which we took the films, we took the presentation.

It makes no difference whether they are wholly owned or not.

MS. HYNES: Okay.

The other companies, basically, are -- the only other company are Albuquerque Utility Company.

THE COURT: Roth was independent and then brought in. What difference does it make whether he was independent and then brought in?

Whatever he did in selling, whatever his company did in selling this material was material that was furnished him from AMREP and he was told he couldn't deviate from it.

MS. HYNES: The other two corporations are the AMREP Construction Corporation.

THE COURT: What do you need that for?

MS. HYNES: Because that deals with what the development was and who were the officers of that corporation, which were Howard Friedman, Daniel Friedman, Solomon Friend and Chester Carity.

THE COURT: What did the corporation do that I haven't heard about yet?

MS. HYNES: That is the corporation that did the building that was done at the property.

THE COURT: What do you need that for since AMREP controlled it?

MS. HYNES: Well, there is no evidence in this record that AMREP did control it.

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THE COURT: But there is evidence in the record that these individuals controlled it.

MS. HYNES: No, there isn't, your Honor, not to date.

THE COURT: What do you need it in the record for?

You have in the record how many homes were built year by year. You put some in this morning, you have Friend's grand jury testimony.

Now what else do you need?

MS. HYNES: Because it shows, for example, Daniel Friedman being an officer of the AMREP Construction Corporation.

In other words, these individual defendants had responsibilities in connection with all aspects of the company's business.

Daniel Friedman was not limited to the sales aspect, he got reports on construction, he was an officer of the construction company.

THE COURT: That is in the record already. You don't need it.

MS. HYNES: I am not sure it is in the record, your Honor, but --

THE COURT: Well, go over it. You went over it for the last four days. You had time to look at it.

MS. HYNES: I went over it and I think we should offer --

THE COURT: You have to show me why, and I don't see why you have to.

MS. HYNES: With regard to Carity-Hoffman Associates, there is nothing in the record as to Carity-Hoffman Associates as such.

THE COURT: You don't need it. You got the proof from the stand of who did it.

I repeat, if I am president of Batten Barton Durstein & Osborn, I am not responsible for everything that is created or everything that comes out of that firm. I might not even known what it is, any more than some senior partner in any law firm downtown knows the names of all of his associates.

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MR. RUBINO: Your Honor, on the question of this chart, I have discussed the chart with Ms. Hynes and though she formerly said -- Ms. Hynes agreed earlier in the trial that she would note on this chart the time of the registration of defendant Oberman.

This morning she tells me, and I am sure it is only because I refuse to give her a stipulation, that she will not put it in the chart.

Your Honor's instruction was that it was to show the position of the defendants and she has admitted in colloquy and in arguments to this Court and in her opening that he resigned in '69. I respectfully urge the Court to direct her to put in the chart the date of that resignation.

MS. HYNES: Your Honor, let me correct Mr. Rubino's statement.

Number one, the chart was to be the officers and directors of the corporation.

Mr. Oberman was an officer in 1961 and a director in '61. He is so listed on the chart. He did not hold an office after that and, therefore, his stockholdings -- he was a director in 1962, I am sorry -- his stockholdings are listed but that is all.

Mr. Rubino has asked me to stipulate with ojw 2

respect to the retirement of Mr. Oberman.

THE COURT: I just assume if he doesn't appear in the year he is no longer connected with it. I assume what I am getting is a year, 1961, the names of the defendants and the offices they hold and 1962 and '63.

Now, if a man's name doesn't appear, he is not an officer.

MR. RUBINO: It does appear.

THE COURT: Not as an officer or director.

MR. RUBINO: I should like her to state specifically in the form of a stipulation that on September 30, 1969 he retired.

THE COURT: You don't need that. His name doesn't appear in the chart under the year and he no longer holds that office.

MR. RUBINO: Shall his name be obliterated in the stockholdings after 1969?

THE COURT: No, not if you are going to have a chart of stockholdings. He is a stockholder, isn't he?

MR. RUBINO: Two percent, yes, after his retirement.

I ask once more and perhaps you will tell me I haven't heard you, but I think in fairness, especially since Ms. Hynes at one time during this trial improperly tried to insinuate his name as being an officer after 1969 --

THE COURT: The chart doesn't have him listed as an officer or director. Who is going to claim that he is an officer or director? You?

MR. RUBINO: The jury seeing this chart will not have before it the fact that he is retired. If there is not a dismissal, I would be forced to prove it.

THE COURT: They know he wasn't a director after 1965 or 1962, they know that.

MR. RUBINO: I want the specific date of retirement.

THE COURT: I don't see that it is necessary at this point.

MR. FLEMING: Your Honor, we had intended to make an application at the close of court today if it would be appropriate to make it now.

THE COURT: Go ahead.

MR. FLEMING: We spent a portion of the two days that the government took off last week discussing whether we could shorten our defense.

I was really under the impression at that time that the government would be resting sometime next week.

Mr. Arkin and I and some of the other counsel talked last evening and we were going to ask your Honor if we could start our defense the first court day after New Years. We had planned to send our juniors, Ms. Thompson and Ms. Cross, if I may call them juniors, next week to Albuquerque.

In an attempt to shorten our case we would like to go out ourselves. If we could start our defense, which I think would be considerably shortened, the first court day after New Years.

THE COURT: I would be ready to start on Wednesday.

You know, I asked for a stipulation to close down between Christmas and New Years and I couldn't get it. There is no point in coming in now on Tuesday when we are closing tomorrow and say, well, now, look, the whole ball game is changed.

MR. FLEMING: The only thing that changed with us is that the government would rest this week. I think it is fair to say we talked to Ms. Hynes about it and she said she would rest before New Years. Rather than sending people out to Albuquerque next week, we would like to go out ourselves.

MR. ARKIN: I think we could foreshorten it considerably if Mr. Fleming and I went out and spoke to a variety of people. I think the issues have been focused now --

THE COURT: What do you call foreshortening it?

MR. ARKIN: You are asking for time?

THE COURT: Yes.

MR. ARKIN: If I gave you a percentage that wouldn't mean very much to you.

THE COURT: You mean a percentage of six months.

MR. ARKIN: I would say from what might have been somewhere around six weeks, I think that we might be able to shorten it somewhere between, say, well, two to four weeks. That is my best estimate right now.

Your Honor has some idea of the length of the number of witnesses we had from what we provided before trial, which is considerable, and we have been winnowing it out as the trial has progressed and we are now at a point where I think it is fair to say that Mr. Fleming and I want to make a final decision as to who we call with a view to what issues remain in the case and with a view --

THE COURT: You are going to have Thursday

MR. ARKIN: Close down court -- I don't want to seem like a time spendthrift, but it is New Years week and we could spend that time --

THE COURT: You are going ot need a day for argument of motions.

MR. ARKIN: Yes, we are.

THE COURT: I will close down, if they finish Tuesday, your motions will be through by Wednesday, you can have the rest of the week off.

MR. ARKIN: New Years day is on Saturday.

THE COURT: How long do you think your motions are going to take?

MR. ARKIN: I would like to ask your Honor that.

MR. FLEMING: I think the argument on the motions, that is another thing we would like to do is present your Honor with a memorandum as we see the case and we would have that to you by Tuesday.

THE COURT: Let's get through with the witnesses. You are not going out to Albuquerque this Thursday and Friday so your wife isn't going to slit your throat if you work on your argument Thursday and Friday.

I will take whatever witnesses the government has on Tuesday and I will hear argument Tuesday. To the and Friday of this week.

MR. ARKIN: The point is that most of our witnesses or a large number of them are in Albuquerque. It is much more difficult to bring them all here than for us to go there. If we go there and see them, I am sure we can make decisions which would foreshorten the trial considerably. I wouldn't say fifty percent or forty-eight percent but certainly by a couple of weeks or three weeks and certainly by a substantial number of witnesses. To go out there over Christmas, that is to leave, say, Wednesday night and come back on Sunday or come back on Monday, Mr. Fleming's family similar to my own aside. I don't think these people would be willing to see us over Christmas.

Our idea was to go out hopefully on Sunday night or on Monday morning and then be able to spend two or three days before New Years and come back.

THE COURT: You are not going to finish here tomorrow.

MR. FLEMING: That is why I raised it now. If it is convenient, they could call Mr. King the first day after New Years and rest their case.

THE COURT: You mean close down court the whole week?

the extent it goes over to Wednesday, if it goes over to Wednesday, and then we will stop.

MR. FLEMING: Fine.

THE COURT: I want motions out of the way by the end of the year and I am sure that you are going to take a long time arguing the motions.

The record is now about 5500 pages and there are over 400 exhibits in so you are going to have a long time to prepare your argument. You ought to do it now. You are not going to do it when you come back from Albuquerque on January 3rd and then want two or three more days off to argue.

MR. FLEMING: If I could argue my motion January 3rd, I would start as soon as your Honor decided the motions.

THE COURT: I have some problems of deciding them.

MR. ARKIN: We don't want to discourage those.

When would your Honor like to have our memorandum, which is going to be a joint memorandum. You are not going to be flooded with memoranda.

THE COURT: I would need the memorandum, I assume, by the end of Tuesday night.

MR. ARKIN: Fine.

THE COURT: The government can have Tuesday to put this missing witness on if they finish both of them tomorrow, which I doubt, we still would never finish two count witnesses in one day. Yesterday was a perfect example.

MR. ARKIN: In the spirit of the New Year, I am not going to cross examine this witness any further.

THE COURT: I don't believe it.

MR. ARKIN: This witness. I didn't say any witness, Judge. This witness I won't cross examine.

MR. DEVORKIN: I have no redirect of this witness, your Honor.

THE COURT: So we will spend the day just reading exhibits to the jury.

MR. DEVORKIN: I think maybe we can finish some of the documents with your Honor.

THE COURT: We will finish tomorrow and to the extent that we haven't finished tomorrow, we will take the government's witnesses on Tuesday and the government will rest then; whatever their status is, it is going to stop and we will start argument of motions and I assume they will be finished sometime on Wednesday and then you are free to come back to start with your defense on January 3rd.

MR. ARKIN: When I said there will be one brief, I was speaking about Mr. Fleming, myself and possibly the corporation. I was not speaking for Mr. Rubino or Mr. Weidner.

THE COURT: I understand that.

All right.

MS. HYNES: As I understand it, the witness will just come back to be excused.

THE COURT: Mr. Fleming, are you finished with the witness?

MR. FLEMING: Yes, sir.

THE COURT: Mr. Arkin?

MR. ARKIN: I am not cross examining. I am finished, your Honor.

THE COURT: Any redirect?

MR. DEVORKIN: No redirect.

THE COURT: The witness is completed then.

Tell the witness he can go.

(Witness excused)

THE COURT: Any other witnesses out there?

MR. DEVORKIN: No, sir.

THE COURT: All right. The government ran out of witnesses.

MS. HYNES: Can we complete the rulings on the documents, your Honor, and then we would be in a position to know better how we can proceed from here on in.

THE COURT: How many more do you have?

MS. HYNES: Not too many.

THE COURT: What do you mean by "not too many"?

MS. HYNES: The ones I am handling, I have some that there have been agreements on. They are minutes ofthe board of directors meeting and certain other things Mr. Devorkin is handling.

THE COURT: How many exhibits do you have?

MS. HYNES: The ones I am concerned with nine and two maps and some of these exhibits have already been ruled on.

THE COURT: You have how many, nine exhibits on which there is disagreement?

MS. HYNES: I am sorry, I have a pile of documents. Some of them there have been no objections on.

MR. ARKIN: Your Honor, might Mr. Hoffman be excused for half an hour during the recitation of documents?

THE COURT: He may.

MR. ARKIN: Thank you.

MS. HYNES: There are about four documents that the defendants were going to look at that they hadn't looked at previously. I don't know whether there is going to be an objection on those.

The other ones, as far as I am concerned, have been ruled on and/or maps that there are stipulations to.

Your Honor, with respect to my documents, if there is no objection to the ones we held aside this morning --

THE COURT: What are those?

MS. HYNES: 612.

THE COURT: Mr. Arkin, 612.

MR. ARKIN: With respect to 612, your Honor, we have no objection to that.

THE COURT: All right, 612 is in.

(Government Exhibit 612 received in evidence)

MS. HYNES: 629 is the next exhibit.

MS. THOMPSON: 613 is the next one I have.

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MS. HYNES: 613, I offer that.

THE COURT: Any objection to 613?

MR. ARKIN: This is, apparently, a conformed copy without any real signatures on it, that is, without the signature of Mr. Oberman, but we have no objection to it.

MR. RUBINO: No objection.

THE COURT: That's in.

XXX (Government Exhibit 613 received in evidence.)

MS.HYNES: 806 were the cover page of the board of directors meetings and the two pages that refer to Mr. Oberman and Mr. Hoffman negotiating for the original purchase of the 55,000 acres.

MS. CROSS: What page is that in the minutes?

THE COURT: 806.

MS. CROSS: I have got 806.

MR. ARKIN: May I read your copy?

Your Honor, with respect to this particular exhibit, 806, I understand it is being offered for that portion which recites that Mr. Oberman and Mr. Hoffman negotiated the acquisition of a tract of land, is that correct, Ms. Hynes?

MS. HYNES: I am sorry?

MR. ARKIN: It is being offered to show that eojb 2

it recites Oberman and Hoffman negotiated for a tract of land?

MS. HYNES: That's correct.

MR. ARKIN: With respect to 806, we have no objection. I should say, your Honor, though, that I don't want to be a predicate to 50 additional sets of minutes which we understand the government will seek to offer. I don't want to burden the record, but it won't accomplish very much.

MS. HYNES: We are not at that point yet. We are offering this for the acquisition as Mr. Arkin stated.

THE COURT: What page are you referring to her?

MS. HYNES: A number stamped at the bottom, 058154, the last sentence on that page and goes over to 155.

THE COURT: All right.

XXX (Government Exhibit 806 received in evidence.)

THE COURT: Go ahead.

MS. HYNES: 629.

THE COURT: This is a new one, this is one that wasn't discussed this morning?

MS. HYNES: This was not discussed this morning. This is an internal memo from Hank Hoffman relating to a Rio Rancho film.

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MR. ARKIN: Ms. Hynes, has there been any discussion about authenticity of this memorandum?

MS. HYNES: There has been no authenticity objection raised.

MR. ARKIN: This particular document was discussed and we raised no authenticity objection, is that the point?

MS. HYNES: This particular document was discussed and it was specifically asked whether there was an authenticity objection and we were told there was none.

MR. ARKIN: The problem I have with this memorandum is that there is no indication that such a meeting as is referred to or as is projected in the memorandum ever took place and, you know, I believe that it quite likely refers to a non-event.

Other than that, I just don't see its relevance. May I hand it up to your Honor?

THE COURT: I am reading it.

This is not admissible for the proof that they actually saw the film.

MS. HYNES: That's correct.

THE COURT: It shows they were involved in viewing it. I will let it in.

XXX (Government Exhibit 629 received in evidence.)

MR. WEIDNER: Your Honor, if I may, this might be an appropriate time to mention one further problem. One of the excerpts of Mr. Friend's testimony which you have ruled is admissible relates to a revision or proposed revisions by Mr. Friend of the script of Your Golden Future. That particular document has been presented to you in the past I think by Mr. Lavinsky.

In any event, I assume that the government intends to offer that script at the time that it reads the grand jury testimony relating to it.

THE COURT: It hasn't been ruled on, has it?

MR. WEIDNER: No, not that particular document. If the testimony is going to be read without the script, then I think it may leave a misleading impression that he read the script without saying that he made any revisions or without saying what the revisions were.

THE COURT: Hold it.

You say -- what page of the grand jury minutes are you referring to?

MR. WEIDNER: 72475, your Honor, at page 19 I believe it is.

THE COURT: Grand jury Exhibit 338 on line 13?

MS. HYNES: Yes, your Honor, which is Trial Exhibit 341.

THE COURT: I don't have a 341 here. Let me see it.

MS. HYNES: Your Honor, we have been unable to locate it.

THE COURT: I have a document here marked Defendants' Exhibit CL for identification. Is this it?

MS. THOMPSON: The script that appears within it is it, yes, your Honor.

THE COURT: Let me give this back to somebody. It is a Defendants' Exhibit for identification.

MS. THOMPSON: Your Honor, I believe it is Exhibit No. 1 in CL for identification.

THE COURT: What is your problem?

MR. WEIDNER: Your Honor, just to trace the history of that particular exhibit for a moment, Mr. Lavinsky gave Defendants' Exhibit CL to you as including documents which the corporation regarded as privileged and, therefore, in the course of production wanted a ruling on them before they were produced.

At that time we had said as to the particular document we are talking about now, the script, that we would object to the admission of it because we regarded the revisions that Mr. Friend suggested and noted on that script as exculpatory to him and therefore not relevant to the government's case.

That objection I understand to have been overruled in the context of Mr. Friend's grand jury testimony on the same script and so what I am saying now is that if the grand jury testimony is going in, then because of that reason we would withdraw our objection to the script and ask that the script go in as well because I think that the script is necessary to make the testimony as it is read --

THE COURT: Didn't I indicate when I ruled on this page that they were to substitute the trial exhibit for Grand Jury Exhibit 338?

MR. WEIDNER: Your Honor, I believe you did that at a later -- and a later exhibit This is My Land in the course of ruling on it.

THE COURT: I certainly meant it for this one, too.

MS. THOMPSON: The script is not yet in evidence, your Honor.

THE COURT: 341 goes in.

MS. THOMPSON: Your Honor, there is a privilege that has been asserted.

THE COURT: Let me see it. Privilege as to 341 which you say is No. 1?

MS. THOMPSON: Yes, your Honor.

THE COURT: What is the basis of privilege?

MS. THOMPSON: That they represent advice to the client by counsel and before we submitted the script to you, you asked whether all changes had been adopted and they had not all been adopted.

THE COURT: Objection overruled.

MR. WEIDNER: Where is the government's copy of 341?

MR. WEIDNER: That is the problem I was going to raise. I believe the copy marked by the government contains a whole sheaf of papers and not just that script.

THE COURT: I have never seen 341 except I have a note here, December 14th -- I have a note here under Musgrove's testimony.

MR. KAUFMAN: Your Honor, when Mr. Musgrove was testifying the government offered that part of the script that reflected what he said on the film, it was paragraph 76, and that part of the script is in evidence.

Unfortunately, since Mr. Musgrove has testified, the government has been unable to locate its copy of 341.

THE COURT: I never took it.

MR. KAUFMAN: I am not saying that, your Honor. All I am saying is that we are unable to locate it, but that is the background of 341 with respect to what has been offered up to this point.

THE COURT: How are you going to get the rest? We are going to have to have it. We will have to mark it.

MR. KAUFMAN: We are going to look, your Honor. If worse comes to worse, I think we may be able to find another copy of it.

THE COURT: Why don't you take that copy and photostat it?

MR. KAUFMAN: That was going to be the next suggestion.

THE COURT: Mr. Lavinsky, you have no objection to the government copying No. 1 in CL?

MS. THOMPSON: Your Honor, we have another copy of that.

THE COURT: You do? Give it to the government.

All right.

Next one.

MS. HYNES: The next exhibit is 559. This is an internal memo from Hugh Hood to Howard Friedman. It relates to Albuquerque utilities, which is the water company wholly-owned by AMREP and states that the utility company was not set up to show a profit, it was used to sell land and discusses the situation of a possible increase in water rates.

THE COURT: Let me see it.

What is the relevance of this to the issues in this lawsuit?

MS. HYNES: Your Honor, the sentence that says that the Albuquerque Utility Company was not set up to show a profit but was set up to sell land is relevant because the defendants used the low rate for water and in the developed portion of the property to sell off the remaining part of the property as something that they were going to develop the entire property when in fact they weren't.

MR. ARKIN: I think that's a pretty far-fetched reading of this document. I think the document is irrelevant and I think if you read it all it doesn't say what Ms. Hynes says it says. Water is not at issue in this case.

THE COURT: Sustained.

MS. HYNES: Your Honor, we would also offer a map of Rio Rancho which is a certified copy from the files of the State of New York and this map shows the various acquisitions. It was submitted by the company to the State of New York. There is a certification on it and it has a color coded designation of the acquisitions of the pieces of land which will relate to the King property. This is the original purchase and then these are the various options that were exercised in purchasing King property and they are so designated.

THE COURT: I don't understand why all this offering of proof regarding the acquisition of the additional land is necessary once it is admitted they bought it.

MS. HYNES: It is just to show the jury where the land is.

THE COURT: It is right north of it and somebody pointed it out on one of those maps.

MS. HYNES: I don't recall somebody pointing out King land being north of it.

THE COURT: I don't think all these documents are necessary regarding the passage of resolutions Negotiations with Mr. Oberman, I assume, would come in as far as his knowledge would be concerned, period, nothing else, but they know it is north of the original purchase. That's all that's necessary. It looks pretty but I don't see why you need it. I am going to rule it out.

MS. HYNES: Your Honor, there has already been a stipulation with respect to what has been marked Government Exhibit 93 and also Government Exhibit 1, which are maps of Rio Rancho.

MS. CROSS: Your Honor, I think both of them are basically the same map. One is large and one is small. We have no objection to a map going into evidence, but again I don't see why we need both of them.

THE COURT: Which one do you want, Ms. Hynes?

MS. HYNES: They are different, your Honor. The large map shows unit, block and lot and we have asked the defendants to agree to draw in this lines for the various units and --

THE COURT: 93 is in, November 10th.

MS. HYNES: Exhibit 1 --

THE COURT: Wait a second, maybe I made a mistake. 93 came in on November 10th.

MS. HYNES: Exhibit 1, there was a stipulation and I did refer to it in my opening. It is different from 93 because it has lots on it in addition. It has more on it than Government Exhibit 93.

THE COURT: Which one do you want? You can have one.

MS. HYNES: Your Honor, we will have Exhibit 93 in. However, I will state for the record now that I did refer to Exhibit 1 in my opening, but that was on the basis there was a stipulation --

THE COURT: I am sure they won't remember your reference to Exhibit 1.

MS. HYNES: The only reason I did that was because there was a stipulation it could come in.

THE COURT: There is no point in having it. All right, rext.

MS. HYNES: With respect to 149-H, which was the exhibit that I referred to this morning as my notes indicating that it was ruled in on November 9th, we have checked the transcript and the court did rule that exhibit in on November 9th at page 575 of the transcript.

THE COURT: November 9th?

MS. CROSS: Your Honor, Exhibit 149-H is a letter back and forth between a customer who has never been called as a witness, a letter from that customer to the company and the company's response to him. On November 9th, it was represented that he was a count customer and I believe he was expected to be called.

But in the absence of him being called, I would object to any document that he wrote to the company coming into evidence.

(Continued on next page.)

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THE COURT: That is 149-H on November 9th?

MS. HYNES: Yes. It was after court, I believe, one day.

Your Honor, there isn't any discussion on the record with respect to calling the witness.

These were documents that were on the microfiche.

Again, basically, they were --

MS. CROSS: On November 9th, I believe, we were discussing authenticity.

THE COURT: That's right. That's what my notes show.

MS. CROSS: Not the admissibility of this document.

THE COURT: That's all we discussed on the 9th.

MS. HYNES: Okay.

Your Honor, on November 9th your Honor said, "I will let it in. There is a" --

THE COURT: Hold it. Let me see it.

(Handing to the court.)

(Pause.)

THE COURT: This document was reviewed on November 9th after court and we were going through on authenticity. That's all we were passing upon at the time.

We went through Exhibit 157 and I have, "There is no objection on authenticity as to 149-H."

The only one there was an objection to on authenticity was 149-J.

Now, this is 149-H?

MS. HYNES: That's correct, your Honor.

MS. CROSS: According to the transcript, your Honor, Ms. Thompson said, "H is not all right. It is a letter written by the customer."

You looked at it, and because there was a letter in response to it, you then overruled the authenticity objection that we had to the letter written by Mr. Garbovich.

THE COURT: Right.

MS. CROSS: But that afternoon all we were dealing with was an authenticity question.

THE COURT: I will let it in.

XXX (Government's Exhibit 149-H received in evidence.)

MS. HYNES: Your Honor, with respect to Exhibit 560, this is a speech by Howard Friedman.

My recollection is that your Honor ruled that the portions designated by the government did come in.

I do not have a note --

THE COURT: I have nothing in on 560.

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MS. HYNES: I am sorry, I do have the transcript reference.

MS. THOMPSON: Your Honor, again, it was not one that was discussed last night.

MS. HYNES: On October 28th, your Honor, 461 through 63.

THE COURT: October 28th?

MS. HYNES: Yes.

THE COURT: I don't have any notes for October 28th.

MS. HYNES: I have the transcript here if your Honor wants.

THE COURT: Yes.

MS. HYNES: Basically, I am offering the same two portions that are marked with the red clip (handing).

(Pause.)

THE COURT: According to this transcript, 560 is in.

MS. HYNES: Yes.

THE COURT: What are you offering it again for?

MS. HYNES: Because it was not marked in at that time.

(Pause.)

MR. ARKIN: Is your Honor going to take the entire speech as an exhibit?

THE COURT: No. She says she is offering the two parts designated by red clips.

MS. HYNES: The red clips are still there.

And also 366, which was the accompanying document.

MR. ARKIN: Might I see the red clipped portions?

MS. HYNES: Yes. The Judge has it.

MR. ARKIN: I understand.

(Pause.)

MR. ARKIN: Your Honor, my objection to the two portions which Ms. Hynes seeks to offer, particularly page 11, is that, you know, out of context it is misleading in that the sentence appears, "Indeed, the overwhelming majority of our home sites sold have all promised improvements complete at the time of sale," and, you know, it seems to me that in the context of this case and in this speech, which deals with the business overall, that that statement has an inference which is an unfair one, the inference being that, "We are going to put utilities, meaning water, telephone lines, sewage, within every lot in two years," and that's not at all what it meant to say.

THE COURT: What does it say?

Where in that speech can you show me words that indicate he didn't mean to say it?

MR. ARKIN: Well, I would say to your Honor that if you, one, look at the entire speech, which I don't ask your Honor to do right now, it talks about the conduct of the land development business, and then if you set that within the context of this case, your Honor many times asked the question of the customers on the stand, "Were you told you were going to have utilities on the land?"

THE COURT: We are not wirried about that, Mr. Arkin, we are worried about what this gentleman said publicly.

MR. ARKIN: But in the --

THE COURT: What it means to somebody who was sitting there listening to him without the background of this case.

MR. ARKIN: May I ask this of your Honor:

It seems to me since this was a speech given to -- well, I don't know whether it was given or not; I have no idea whether it was given -- but at least an address which purports to have been prepared for a seminar of Equity Research Associates, those special kinds of speeches that presidents of companies make to people who analyze stocks, I would ask your Honor that the entire speech be marked in for the sake of completeness, under that doctrine.

Just to pick out a couple of sentences --

THE COURT: I am asking you, wherein do you find anything that detracts, modifies or is necessary for clarification of what Mr. Friedman said?

MR. ARKIN: Let me go through it, then.

(Pause.)

MR. ARKIN: One comment, your Honor, on page 7, the speech refers to Silver Springs Shores, and Silver Springs Shores is a very different kind of community in terms of its development concept than Rio Rancho.

In Silver Springs Shores there is no exchange. Accordingly, since there is no exchange, there is a different --

THE COURT: Doesn't the part that Ms. Hynes wants to offer refer to Rio Rancho?

MS. HYNES: The sentence Mr. Arkin is referring to here is referring to Rio Rancho.

MR. ARKIN: He is talking about the entire business and I don't believe this sentence on page 11 refers alone to Rio Rancho, unless Ms. Hynes can show me differently.

So it refers, in effect, to two developments, or at least two developments, and in light of what we know to be the fact in this case.

THE COURT: I don't know what the fact is in this case. The jury is going to tell me what that is.

MR. ARKIN: Well, the fact in this case, your Honor, is that customers were never promised that they would have utilities on the particular lots they purchased. I think we have established that.

THE COURT: Let me see it.

MS. HYNES: I don't think that that has been established, your Honor.

(Handing to the court.)

(Pause.)

THE COURT: I don't know what you object to. Isn't that exactly what the proof is here, what you find on page 11?

When they wanted a home site they had utilities.

MR. ARKIN: Here the sentence that Ms. Hynes wishes to put in says, "When we have not sold land without promised improvements being completed within two years of the sale," I would think that somebody could misunderstand this to mean that once we sold a lot at Rio Rancho, that within two years utilities were implanted at that site.

In other words, if your Honor please, what this does is not take cognizance of the exchange concept or of the fact that people I think we have established --

THE COURT: No government witness has ever indicated they expected improvements within two years.

MR. ARKIN: That is exactly right, your Honor. That's why this particular sentence in the context of this case and in this overall speech which was given to security analysts and which concerns Silver Springs as well as Rio Rancho is misleading.

Silver Springs, to tell your Honor, I know it's not in this case, but Silver Springs --

THE COURT: Then don't tell me. You will onl confuse me.

MR. ARKIN: I'm sure I wouldn't do that, but I won't tell you. It's just different.

I think just to select one sentence out of an entire speech is --

THE COURT: Ms. Hynes, are you offering this to prove that the defendants intended to have all improvements in within two years of a sale in unit 28?

MS. HYNES: No.

THE COURT: What are you offering it for?

MS. HYNES: Your Honor, that statement is consistent with the statement in SEC filings that says that the unsold land, the land that they were offering for sale nationally, was to be improved only by dirt roads, and that is what the improvements are and, in fact, those are the improvements that probably were put in within two years of the sale and those were the promised improvements, the dirt roads.

That is consistent with statements in SEC filings.

THE COURT: Why do you have to buttress the SEC filing with this if you say it is consistent?

MS. HYNES: Because the SEC filing that specifically states that is a filing in 1972. This is a statement by Howard Friedman in 1970 , and it reaffirms that --

THE COURT: But you don't need reaffirm answers, do you?

MS. HYNES: It depends upon what --

THE COURT: I think it is coming in for another reason and Mr. Arkin has convinced me that it could be misleading, even though I think if you analyze it carefully it is consistent with the proof in this case.

I will sustain the objection to page 11.

What is the objection to page 8?

MR. ARKIN: I have no objection to page 8, your Honor.

I would, again, like the whole speech, but I have no objection to page 8.

THE COURT: 560 is in as to page 8.

XXXX (Government's Exhibit 560 received in evidence.)

MS. HYNES: Your Honor, there was another exhibit that we handed up, which is 366.

THE COURT: Yes. Wait a second. I haven't reached that yet.

MS. HYNES: All right.

THE COURT: 366?

MS. HYNES: Yes, your Honor.

THE COURT: I don't understand if you are only reading two sentences why you want to put this in for.

MS. HYNES: I wanted to see that again, but I'm not sure that that reflects that that speech was distributed to home site owners.

MR. ARKIN: You see, if you are going to put in 366, your Honor, it seems to me the whole speech should go in.

THE COURT: Wait. Ms. Hynes is reconsidering whether she wants to put in 366.

MS. HYNES: I am not.

THE COURT: All right. Next exhibit.

MS. HYNES: 887 there has been no objection.

It is a computer printout.

XXX (Government's Exhibit 887 received in evidence.)

MS. HYNES: 885 there is no objection.

MS. THOMPSON: Has page 3 been taken out?

MS. HYNES: Yes, page 3 has been taken out.

XXX (Government's Exhibit 885 received in evidence.)

MS. HYNES: 579 has already been ruled in, your Honor. We are only offering the two paragraphs, 6 and 7, which relate to --

THE COURT: I am sorry. I missed it.

MS. HYNES: 579.

THE COURT: Paragraphs 6 and 7 only?

MS. HYNES: Yes.

MR. WEIDNER: Your Honor, I know you ruled on this in the past, but we reiterate our objections to the admissibility of those two paragraphs for a lack of foundation.

THE COURT: All right.

The same ruling.

Go ahead.

MS. HYNES: Your Honor, I am just checking the next exhibit, whether I have any more.

XXX (Government's Exhibit No. 579 was received in evidence.)

MS. HYNES: I have no further exhibits, your Honor, but Mr. Devorkin has some other documents.

MR. DEVORKIN: At the pretrial conferences, the government sought to offer portions of documents filed by the corporations here with the State of New York.

There were certain objections at that time that went to relevance and cumulativenessw, because we were seeking to do a similar thing that we had done with the SEC documents, namely, say that this language or virtually similar language appeared in statements filed on and then give certain dates without repeating all of the language.

Your Honor suggested or directed us to work toward a stipulation that would fairly summarize the portions we sought to offer.

I did that and gave our proposed stipulations to the defendants. They came back to me yesterday and, through Ms. Cross, said that, in essence, rather than stipulate, they want the language from each document actually as it appears in the document in evidence and, in fact, they want the entire document in evidence.

I am prepared to go through the documents we are talking about.

Our position is that --

THE COURT: Let me see one.

MR. DEVORKIN: All right.

THE COURT: Any one.

MR. DEVORKIN: All right.

I guess I will do it chronologically.

THE COURT: I want to take a look at one so I know what you are talking about.

MR. DEVORKIN: All rig

I am handing up 455.

(Handing)

I am offering page 7, Question No. 12(C).

This is a document signed by Mr. Blum on behalf of the corporation in 1961 and filed with the State of New York.

THE COURT: That is all you are going to offer in Exhibit 455?

MR. DEVORKIN: Yes.

MS. CROSS: Your Honor, may I be heard on this?

THE COURT: Oh, definitely. I wouldn't think of ruling without listening to you.

MS. CROSS: Thank you, your Honor.

THE COURT: Go ahead.

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MS. CROSS: In one of the stipulations that Mr. Devorkin tendered to us he wanted to put in this part of Exhibit 455.

He then gave us another stipulation and wanted to put in the same parts of two other years, 1972 and 1973.

He has left out that part of the documents in all the filings between 1961 and 1972, and that is probably because in the documents between those years, if your Honor looks at the document in front of you, under "Speculation" they wrote "Yes".

THE COURT: He has only called my attention to 12(C).

MS. CROSS: Yes.

THE COURT: You say you want more than 12(C) in?

MS. CROSS: Yes.

THE COURT: Mr. Devorkin, what do you need this at all for?

MR. DEVORKIN: Your Honor, I am offering that and similar language in '72 and '73 because that document you have in front of you is signed by Mr. Blum and I am offering it to show Mr. Blum's knowledge.

I am offering similar portions of two other documents which are signed by Howard Friedman to show Howard Friedman's knowledge of those facts.

THE COURT: The fact is -- what facts? That they were selling property for investment, not for speculation?

MR. DEVORKIN: Yes, by the methods that are listed there.

THE COURT: What is your objection to that?

MS. CROSS: In the years between those two documents, that form is checked "Yes" under speculation. It is not only somewhat but I think very misleading when you put in three documents from three carefully selected years that say that and then in another stipulation you put in only parts of the documents from the inbetween years but you take a different paragraph from those documents in the inbetween years.

THE COURT: You have lost me.

MS. CROSS: Okay.

In these three documents --

THE COURT: Which three?

MS. CROSS: 1961, 1972 and 1973 --

THE COURT: What were the exhibit numbers?

MS. CROSS: 455, 439 and 440.

THE COURT: What is the lowest one?

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MR. DEVORKIN: 439.

THE COURT: What year?

MR. DEVORKIN: 1972.

THE COURT: 455 is the next one?

MR. DEVORKIN: 440, 1973.

THE COURT: What is the 455?

MR. DEVORKIN: 455, 1961.

THE COURT: You people always work backwards, don't you?

All right.

What is your point, Ms. Cross? They just took the years 1961, 1972 and 1973?

MS. CROSS: Yes.

If you look, then, at Exhibit 435, which is for the year 1970, the same section of that exhibit they do not want to offer, they are seeking to offer another section on that exhibit on improvements, which appears, I believe, one page back from this and not the section that your Honor is looking at, not the correlative section, if you will.

THE COURT: And they want improvements on 435.

What else are they putting in?

MS. CROSS: 435, all they want is improvements.

THE COURT: Yes. What else?

MR. DEVORKIN: I will give you the other numbers, your Honor, if you want.

We are offering -- do you want them in trial exhibit sequence?

THE COURT: I gather what the point is, over a long period of years there were annual reports, right?

MR. DEVORKIN: Filings within the State of New York.

THE COURT: Yes. And some of them they said investment and in some of them they said speculation.

MS. CROSS: And investment, both. Speculation and investment.

MR. DEVORKIN: I am offering the statement in front of your Honor because Mr. Blum signed that one. Mr. Blum didn't sign any of the others.

And I am offering two of Mr. Howard Friedman's statements where he signed similar language.

THE COURT: Right.

MR. DEVORKIN: I am offering it to show their knowledge.

THE COURT: That's all?

MR. DEVORKIN: Yes.

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THE COURT: You don't have reference to No. 12. Why don't yourefer to paragraph 13?

MR. DEVORKIN: I am sorry, your Honor? I don't have the document.

THE COURT: Obviously you are picking out 12 because it says "investment".

You could have picked another paragraph out to show that Blum signed it, couldn't you?

MR. DEVORKIN: Oh, yes, to show Mr. Blum's knowledge of that statement.

THE COURT: So you are putting it in to show they said investment?

MR. DEVORKIN: Mr. Blum says investment in that year.

THE COURT: I gather that there are other years in which they said it was both speculation and investment?

MR. DEVORKIN: I don't think there is any year where Mr. Blum said that.

MR. HOFFINGER: I didn't hear that.

MR. DEVORKIN: I don't think there is another year where Mr. Blum signed a document saying that.

MR. ARKIN: You know, your Honor, when you think about the picking and choosing among all of th documents filed over the years, I think as your Honor well knows, these are documents which are prepared by and large by lawyer s and clients just sign them.

While I am not suggesting that somebody who signed it --

THE COURT: That is terrible from your cross examination of the witness to sign without reading.

MR. ARKIN: I am hoist with my own petard.

THE COURT: You are.

MR. ARKIN: Your Honor, I agree it is terrible, but it is a fact of life, and what I am suggesting is --

THE COURT: I want to hear that summation.

MR. ARKIN: But, you know, I won't say it in my summation, Judge.

MR. DEVORKIN: This document was signed under oath, I think, your Honor.

MR. ARKIN: My point is a little different.

My point is where you pick and choose in a situation like this, it is really not fair to pick and choose in these circumstances, that's all.

THE COURT: What was Blum's -- this is 1961, right?

Is this the only one Blum signed?

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MR. DEVORKIN: I believe so, your Honor.

MS. CROSS: 1972 and 1973 were apparently not signed by Mr. Blum, but the government wants to put them in also, not 1971, though.

MR. DEVORKIN: They were signed by Howard Friedman.

MS. CROSS: And he also signed 1971.

THE COURT: Do you want to put 1971 in?

MR. DEVORKIN: If your Honor rules we have to put it in, we will take your Honor's ruling on that.

THE COURT: I really don't think it makes much difference as far as Mr. Blum is concerned, does it?

MS. CROSS: What about, your Honor --

THE COURT: This is 1961.

MS. CROSS: Perhaps, your Honor, the best way to handle this is to xerox out, you know, those parts of the documents from all of the years that the government has suggested rather than put the entire document in, take that section, for example, 13, and xerox it out of the various years and then we also have the question of improvements, xerox that out for the various years.

You don't have to read them all to the jury, you can read one of them and say similar, you know, statements appear this, this and this and different statements, but that the whole group ought to get put into evidence, those pages from the various different years.

I might note also, your Honor, that last night when we were going through another exhibit with Ms. Hynes, it was a HUD filing.

What Ms. Hynes wanted to offer in evidence was the entire what turns out to be Exhibit 439, and we told her we would have no objection to the admission of the entire Exhibit 439. That's what we asked here today, to put in the entire file, which is what Ms. Hynes wanted to do last night with -- it appears just as it does in 439 in the HUD filing.

THE COURT: You didn't have HUD in 1961.

MS. CROSS: No, no.

439 is, I believe, from 1972, and that was the part --

THE COURT: You know, it seems to me, why do you have to put in HUD and New York State for the same reasons?

MS. CROSS: It isn't.

THE COURT: Is it because it is signed by different people?

MR. DEVORKIN: Today Ms. Hynes didn't offer the document Ms. Cross is talking about.

MS. CROSS: The Exhibit 439 in the HUD filing, they filed a copy of the New York filing.

THE COURT: Let me ask, are you putting in duplicate reports for HUD and New York State for the same year?

MR. DEVORKIN: No, I don't believe so, your Honor.

MS. CROSS: All it is is a copy of what is, in fact, Exhibit 439 appears in the HUD filing and it is that part that Ms. Hynes wanted to put in --

MS. HYNES: I didn't offer it.

THE COURT: It is not in.

MS. CROSS: I know.

MS.HYNES: I didn't offer it. It was not complete. It didn't have allthe attachments.

THE COURT: All right. So we don't have any duplications?

MR. DEVORKIN: I don't believe so.

THE COURT: Don't say you don't believe so. I am saying, you don't have any.

MR. DEVORKIN: No, we don't.

THE COURT: Then don't try to put any in. Now the question is, who signed them, if you

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want to use that.

I think, Ms. Cross, the government is entitled to use whatever ones they wish.

There may be inconsistent ones, but why should the government have to prove the inconsistency?

MS. CROSS: No. It just shows what was said throughout the period that we are dealing with, not taking one, listing one out of context and then arguing from that and pretending that the others just don't even exist.

It seems to me that presents a fair picture throughout.

THE COURT: Of course, if you had a witness on the stand, they could bring the other ones through the witness.

What is wrong with taking investment and what number 13 is for all the years and just xerox it out with the name of the person who signed them? Doesn't that serve your purpose?

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MR. DEVORKIN: I would prefer to offer it the way I have done it. If your Honor rules to get those sections, if we have to get those, we will offer both. We prefer to offer it the way I have offered it. If the only way we can get it in is to offer the other ones, we will take the other ones to get these in too.

THE COURT: What about additional indications, instead of putting the whole thing in --

MR. DEVORKIN: I don't want the whole thing in. I am only offering this section and the section on utilities for various years where basically the same language as the residential unit, applying to different residential units, the same language appears.

I tried to summarize it in a stipulation --

THE COURT: How could you do it if it was inconsistent from year to year?

MR. DEVORKIN: On utilities it wasn't. I was willing to sit down and work out a fair piece of language that would represent everything.

Basically what the utilities language in each of the years said was that there are utilities being supplied in the current residential units as of this date, so for the years whether it was Unit 11 and Unit 16, it listed those units, for the years whether it was only

Unit 16, it said Unit 16. The language goes on to say that they are not currently furnishing utilities out of that residential unit, whichever it was on that date, and that the utility companies do not intend to do until there are sufficient homes built in their general vicinity to warrant the installation of their facilities.

I took the most recent language of '72 and set it out in haec verba and then I said for 1971, similar language on utilities appears in a report filed and similar statements on utilities outside the residential area in Unit 16 appear in reports dated and I gave the dates because those dates only applied to Unit 16.

I was willing to sit down and work out fair language so that we could have one or two pages for the jury that would cover all of this rather than have a lot of documents because that is what I thought your Honor wanted us to do at the pretrial conference.

THE COURT: That is what I thought we accomplished, but it doesn't seem we got there.

MS. CROSS: First of all, I think it is important that the jury realize this is a form that is filled in and that is why I wouldprefer to have a xerox of that rather than it typed over on a stipulation which looks as though it could have been written out --

THE COURT: Look, I cannot -- if the government wants to put in Exhibits 439, 440 and 455, I don't see how I can tell them they must put in Exhibit 427 because you would like it in. This is their case.

So I will let 439, 440 and 455 in and you can put it in either way you want.

MR. DEVORKIN: I will do the same thing with the utility paragraphs --

THE COURT: Wait, we have only done 439, 440 and 455, is that right?

MR. DEVORKIN: Yes.

In 439, your Honor, I am also offering another section of 439.

THE COURT: I gather you will put the whole thing in unless you can work out with counsel only putting in the portions.

If they want the whole thing in, then you put the whole thing in and that is the way you get it in.

MR. DEVORKIN: I just don't think the whole thing is relevant. I am not offering the whole thing. The whole thing --

THE COURT: Look, you are ahead of the game. What are you arguing about? If they are willing to only put the portion in, fine. If they want the whole document in, it goes in.

end

(Continued on next page)

MR. HOFFINGER: Your Honor --

THE COURT: I will deny your application to put it in for other years. This is the government's case. You can't force them to put in what you want them to put in.

MR. HOFFINGER: Your Honor, I am obviously objecting to this coming in against Mr. Blum.

THE COURT: Of course it is, he signed it.

MR. HOFFINGER: There is still the basic question, I know he signed it and I am not suggesting he didn't know what he signed, I am not saying that at all, there is a basic critical issue of pertinency as far as tying him into this case because there is nothing to indicate what he was signing was untrue.

THE COURT: We get a little difference of opinion here, whether they were selling it for investment or selling it for speculation.

MR. HOFFINGER: I said there is nothing to indicate as far as Mr. Blum is concerned that he knew that it was untrue. That's all I am saying.

THE COURT: A lot of things don't basically show, but there is a word called "inference."

439 is in, which is the New York State registration 9/1/72.

440 the same thing for 1/8/73, is that correct?

MR. DEVORKIN: Yes, your Honor. Your Honor wants us to use the entire document?

THE COURT: Right, unless the defendants are willing to have you only use a portion of it.

455 is the same thing.

MR. DEVORKIN: Yes, your Honor.

THE COURT: What is the date?

MR. DEVORKIN: 1961. Your Honor has it in front of you.

THE COURT: I can't tell the date from this and it is not on the index.

MR. DEVORKIN: December 19th.

XXX (Government Exhibits 439, 440 and 455 received in evidence.)

MR. DEVORKIN: There are other documents like that, your Honor, and I was seeking to offer them.

THE COURT: Are there the same objections?

MS. CROSS: Are you referring to the other stipulation on improvements then?

MR. DEVORKIN: Yes.

MS. CROSS: This again we think the documents should go in themselves.

THE COURT: Which exhibit?

MR. DEVORKIN: Let's start off with the first one.

MS. CROSS: 439.

THE COURT: 439, 440 and 455 are already in.

MR. DEVORKIN: The first one would be 435, your Honor.

THE COURT: What is this being offered for?

MR. DEVORKIN: I am only offering the section on utilities at page 8, question number 13 in the rider.

MS. CROSS: We would suggest that the entire document go in.

THE COURT: It is all right with me.

MR. DEVORKIN: Your Honor, I just make the point --

THE COURT: You just read the portion you wish.

MR. DEVORKIN: All right.

THE COURT: What is the date of this registration?

MR. DEVORKIN: Just one moment, your Honor.

XXX (Government Exhibit 435 received in evidence.)

MR. DEVORKIN: February 20, 1970.

THE COURT: February 20, 1970?

MR. DEVORKIN: Yes.

THE COURT: Yes.

MR. DEVORKIN: Your Honor, I am going to go back and look at these documents in light of your Honor's saying the whole thing comes in and whether in light of having the whole document come or we may skip it.

THE COURT: All right.

MR. DEVORKIN: I believe the next one is 443. That is dated November 6, 1971.

THE COURT: 443, I have a date here November 16, 1974.

MS. CROSS: It is '71.

MR. DEVORKIN: It is November 6th.

THE COURT: All right. Do you think we ought to bring the jury in instead of doing this?

MR. DEVORKIN: The only thing I have left are minutes of board meetings I want to get in. We can do whatever you want.

THE COURT: We will do it at 9:30 tomorrow morning.

MR. DEVORKIN: Can I finish these state filings?

THE COURT: No, it is a quarter to four.

MS. HYNES: Your Honor, can I just have a moment to organize documents so I know what I want to read.

MS. THOMPSON: May I hand up CL to your Honor so you can rule on it?

THE COURT: Didn't I rule on it?

MS. THOMPSON: No, you only did one out of 18.

(Recess.)

(Continued on next page.)

T5a.pm

(In open court in the absence of the jury.)

THE COURT: All right, let's get back.

MR. DEVORKIN: Your Honor, on the state filings, I have made a decision about which ones we are going to use and not use.

I am not going to use 435.

THE COURT: You are not using 435?

MR. DEVORKIN: That's correct.

THE COURT: All right.

MR. DEVORKIN: I am not going to use 443.

THE COURT: We haven't gotten to 443.

MR. DEVORKIN: We were just talking about it when we broke.

THE COURT: I haven't got anything on 443.

MR. DEVORKIN: So the only ones I am using are 439, 440 and 455.

THE COURT: Right.

Okay.

MR. DEVORKIN: I had some other documents, and I take it by your Honor's rulings about Rainbow Lakes that it is useless for me to say anything about that?

THE COURT: Forget it.

The testimony after seven weeks of trial is miniscule regarding Rainbow Lakes.

MR. DEVORKIN: The last item I have deals with the board of directors and executive committee meetings primarily of AMREP and Rio Rancho Estates.

THE COURT: Before I forget, I have this Exhibit CL, and just to have the record straight, it has an index 1 through 18. 18 is inserted loose, and I have that.

Has the government offered any of these in evidence aside from No. 1?

MS. HYNES: Your Honor, I haven't seen it so I don't know what the index is referring to and I don't know --

THE COURT: Let me ask Mr. Weidner.

MS. THOMPSON: Your Honor, I don't have the full list in front of me, but it is my recollection that they have not.

Some of them were premarked Government Exhibits, but they have not been offered.

THE COURT: If they haven't been offered, I don't have to rule on it.

MS. THOMPSON: No, your Honor, you don't get off that easy.

These are exhibits that Mr. Friend proposes to put in evidence on his case, and the defendants were ordered to turn over to the government the exhibits which they intended to put in evidence and what we needed to submit now are the board of directors or executive committee minutes of basically the two corporations. There are a couple with respect to ATC.

I would like to make this general statement about them and where they came from.

The government is offering these primarily to show what Mr. Blum's and to some extent Mr. Friend's and Mr. Hoffman's knowledge and activities were in the corporate sense.

There are statements which will apply to some of the other defendants, Mr. Howard Friedman, Mr. Daniel Friedman, and we are offering those, but the thrust of the documents goes to prove showing what those three gentlemen did or knew as they participated in corporate affairs as officers of the company.

I don't think there has been a lot of documents on that, and I think under the authority we cited to your Honor in our trial brief on the individual defendants with respect to the government's ability to prove the duties that an officer has and how he goes about exercising those duties in the corporate sense, that the documents generally are admissible.

I am only offering for the most part small sections of each document, I am not offering the whole thing, nor do I even intend to read all of the portions I am offering to the jury.

Preliminary to that, the government --

THE COURT: That was a primary you were giving me. You are giving me a preliminary to that preliminary?

MR. DEVORKIN: Besides the minutes, the government would also seek to offer two documents which are the bylaws of AMREP as they relate to duties in spheres of control of officers and the articles of incorporation in that same sense of Rio Rancho.

Now, as to these documents, I haven't got the exact percentages, but a number of them were used in our original exhibits brief filed back in September.

A number of them were not listed in the original exhibits brief, but they were premarked exhibits which were disclosed to the defendants at the same time they were disclosing all of our other documents.

As we noted in the beginning of our exhibits memorandum that we had made some decisions about what we thought we had to use, we did, we thought, reserve the right to examine as the evidence came in whether there were other portions of exhibits that properly should be offered by the government. We offered the days your Honor gave us just a few days ago to go back over these minutes to select the portions that we thought were necessary and relevant, and we did that.

Now, there are additional exhibits, again, minutes, that were not premarked as Government's Exhibits. Those are other minutes of the same corporations produced a long time ago by the defendants in the grand jury process, and for the most part they relate to earlier dates in the '60's.

In analyzing the government's proof to date and what we thought we should offer against the defendants before we rested, I went back and examined those documents and I did pull out some of those documents that were not premarked as a trial exhibit.

We thought for the most part of the trial we haven't done that kind of thing. There have been some examples where documents have come to us where we have marked them and offered them.

I showed them all to the defendants last night, including penciling in the part I was offering, basically, and left all of them here in the courtroom for them to examine, and we would seek to offer documents, portions of documents in all three categories that I have delineated.

THE COURT: For a start, let's go through them.

MR. DEVORKIN: The first one which I will mark 948 is simply the articles of incorporation of Rio Rancho, and I offer paragraph 7 on page 3 where I have placed a paper clip.

THE COURT: Any objection?

MR. FLEMING: Your Honor, I object because I think they prove nothing.

THE COURT: 948, this is known as?

MR. DEVORKIN: Yes, sir.

THE COURT: Let me see it.

(Handing to the court.)

(Pause.)

THE COURT: Objection overruled.

MR. HOFFINGER: Your Honor, if I may say this, I have not seen the document. Perhaps that is my fault. I didn't know they were available last night.

Is that document signed by my client or any of the other people?

THE COURT: No.

MR. DEVORKIN: Ms. Thompson tells me they don't dispute that those are the articles of incorporation.

MR. HOFFINGER: It is my understanding that that document was prepared by a law firm, was it not?

THE COURT: But it is of a corporation of which your client was an officer or director, is that right?

MR. HOFFINGER: Yes, your Honor.

THE COURT: Go ahead.

XXXX (Government's Exhibit 948 received in evidence.)

MR. DEVORKIN: The next one was not premarked as a trial exhibit. I will call it 948-A now.

It is the bylaws or a portion of the bylaws of AMREP.

The number of directors changed over time and Ms. Thompson has given me that figure.

I am offering the parts that I lined in the margin with pencil.

THE COURT: Let me see it.

(Handing to the court.)

THE COURT: You don't need half of this stuff to show their responsibilities.

MR. DEVORKIN: I am sorry, your Honor?

I think I am trying to show the duties in respect of the officers, particularly the board of directors and the chairman of the board.

THE COURT: You don't need No. 12.

You don't need the sentence in No. 22 to the effect during the intervals between the meetings of the board the executive committee should act.

MR. DEVORKIN: Some of these minutes are executive committee minutes and Mr. Blum is a member, as are two of the other members of the executive committee.

THE COURT: You don't have to say who an officer is. It is either an officer or he isn't. That is going to be in your chart, isn't he?

MR. DEVORKIN: I agree with that. I just want to give the duties of the officers.

THE COURT: No. 25 doesn't give them any duties, it just gives them names.

MR. DEVORKIN: I didn't realize I put a pencil in the margin on that, your Honor.

THE COURT: You have a bracket there in pencil.

He says he shall hold office until his successor is chosen. It doesn't have anything to do with this case.

25 is out.

You would haveto show an absence of the chairman of the board to show the president took his place.

I don't have any absence of the chairman of the board.

MR. DEVORKIN: At meetings, your Honor?

THE COURT: Yes.

The fact that the president shall take the chairman of the board's place is meaningless unless the chairman of the board was absent.

MR. DEVORKIN: Fine.

THE COURT: All right, to the extent I said it is in, it is in.

XXX (Government's Exhibit 948-A received in evidence.)

MR. DEVORKIN: As to the minutes, this is a general statement as to all of them:

I would offer, and I guess with the portions I will read to the jury, I will read who was present at the particular meeting I am talking about and the date of the meeting and who presided.

THE COURT: I gather there are portions of the minutes that you want in because they will show that the people present were aware of something that was going on which you charge is illegal?

MR. DEVORKIN: Yes, or one of the defendants said something at the meeting.

THE COURT: What are your problems?

MR. FLEMING: I am told, if your Honor please, by Mr. Lauer, I have never reviewed these myself, that those minutes don't show any such thing. All they say is, "company business discussed."

MR. DEVORKIN: Your Honor, there is nothing in the document where the defendant stands up and says, "This is illegal and I want all of you to know that."

A defendant will stand up and report on sales or sales problems or discuss sales strategy, which is what the minutes will reflect --

THE COURT: That's all.

MR. DEVORKIN: And there are other defendants present when the board discusses those issues.

THE COURT: How from that do you draw the inference that they were discussing any of the things which you claim was illegal?

MR. HOFFINGER: That's right?

MR. DEVORKIN: Because, your Honor, one of the things I think the government is entitled to show under the cases we set forth in that brief on the individual defendants is what the corporate control and activities of each of the defendants was, how they exercised their corporate office, what their duties were and how they exercised their duties in the corporation.

THE COURT: That isn't what you just told me. You told me you were going to read a portion of the minutes to show that individual defendants were present when they were discussing something that would bear on wrongdoing from which you could show intent and knowledge.

If they were discussing sales strategy which had nothing to do with any of the evidence heard here from this stand, how can I let that in for the jury to draw an inference that they were discussing things that were testified about from the stand?

MR. DEVORKIN: Because I think the inference is fair for this reason:

You have examples where --

THE COURT: I want specifics in the minutes you are going to offer.

MR. DEVORKIN: We can get to the minutes if your Honor will give me a few minutes.

For example, there is a minute for the board meeting of AMREP for December 16, 1965.

Present are Mr. Blum, Mr. Carity --

THE COURT: Forget who is present.

Tell me where in those minutes you find anything relating to the testimony we have heard from the witness stand for the last seven weeks?

MR. DEVORKIN: All right.

On the first page, for example, the minutes say, "The party reception program instituted for the sale of Rio Rancho property was discussed and it was announced that the program was being increased at a rapid rate.

Mr. Carity described the new sales operation which had been instituted, which program involved the holding of dinner receptions for prospective purchasers. Messrs. Hoffman and Friedman discussed the status of releases of land at Rio Rancho under the agreement with Edward Snow, including releases given at the time of payment on such and such a date."

That shows that Mr. Blum as a member of the board of directors is participating in a discussion of --

THE COURT: He was present while the discussion was going on.

MR. DEVORKIN: -- of the very dinner program that we presented evidence about in this case.

THE COURT: You mean that they discussed the details of the dinner program or that they read to the board the presentation?

MR. DEVORKIN: It doesn't say that. They may have or they may not have, your Honor.

But under the cases, I submit, when -- the Second Circuit has said this recently in the Bernstein case and in Squires they said this, that a corporate officer who is aware that representations are being made or that a sales presentation is being given or that things are being said to the public to sell his company's product is under an obligation, because of his corporate position and the things he does in his corporate position, to know what his company is doing.

This is evidence that he does know what the company is up to, and the Second Circuit has said that from that you can infer that he did know the details we are talking about.

There are many, many cases where the courts have said where you have an officer of a company who is generally responsible for sales in the company and he sets up a broad program --

THE COURT: That takes care of Ms. Hynes' comment before that I left evidence in against Friedman, who is vice president of sales, but I won't let in this Carity-Hoffman deal. That proves it.

Of course if I am vice president of sales and the business of this corporation is selling, he knows everything that goes on.

MR. DEVORKIN: This is what this kind of evidence shows.

THE COURT: But this is a fellow about who else? This isn't a vice president of sales, is it?

MR. DEVORKIN: No. But the people that deal with these activities, such as sales and so forth, are reporting to the board of directors and the superior officers --

(Continued on next page.)

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THE COURT: Youwant me to allow it in so the jury can assume that they discussed a statement that was made to the public which was improper?

MR. DEVORKIN: Mr. Blum was president of the company at the time these discussions are being held.

THE COURT: Yes?

MR. DEVORKIN: And he is participating in the board of directors meeting. He is aware that the business of Rio Rancho and AMREP is to sell lots at Rio Rancho.

Here is a discussion of that very program that they are conducting to sell these lots.

There are cases which say that if you show the officer's control and his volvement in a sphere of the company's activities, that he can be convicted criminally without direct actual proof that he knows the detail.

THE COURT: You used the word "control," and that is the key.

MR. DEVORKIN: Here he is the chief executive officer at the time of this meeting.

THE COURT: Who is?

MR. DEVORKIN: Mr. Blum.

THE COURT: I thought the chairman of the board was the chief executive officer, not the president.

I gather the president, from what you showed me, he only becomes important if the chairman is missing.

MR. DEVORKIN: I have to refer to those by lawyers.

THE COURT: I think the only way to do it is give me your documents, mark the portions you want to offer in evidence and I will read them and I will decide whether they come in or out.

MR. DEVORKIN: Fine.

There is only one other point I want to make, your Honor.

There are references, for example, to Mr. Friend and Mr. Daniel Friedman reporting on the areas of their activity and their concern, sales, construction and so forth, to Mr. Blum and to others present at some of these meetings.

We think that that shows --

THE COURT: No, not Mr. Blum.

MR. DEVORKIN: Mr. Blum is either chairman of the board or president at most of these meetings or a member of the executive committee, which was the group controlling the corporation.

The under officers are reporting to the controlling board of directors about their activities and about the things that they are directly responsible for.

We think that it relates to those board of directors responsibilities and control they exercised over the corporation. It also lays the basis for the knowledge of Mr. Friend, for example, about the projections we have talked about already, that he is doing non-legal activities, that he is aware of certain aspects of the sales effort.

THE COURT: There is no doubt in my mind that Mr. Friend had more than just had a legal relationship with the corporation. That's not the issue.

MR. DEVORKIN: But we are trying to show the jury that there shouldn't be any doubt about it.

THE COURT: You have to convince me on a motion to dismiss.

MR. DEVORKIN: Of course. Of course. But we also have to convince the jury about that, and we think that all of the evidence that is lined up in here does show that Mr. Friend is active in other areas and has a basis for the statements he made in the grand jury, it isn't just speculation, and we think it shows the control of Mr. Blum and the others as directors of this company, hearing reports on various activities that the company is intimately involved in that represent most of the company's activities.

I mean, one example, besides the kind that I have given your Honor, I have selected some examples where Mr. Blum or Mr. Friedman in Mr. Blum's presence at an executive committee hearing, recommends basically for the good of the company sales people be given bonuses in the form of stock options, and Mr. Blum or Mr. Friedman will say that that is important or that that is necessary and he recommends it and he is involved in approving essentially bonuses for the sales people that we have heard testimony about; Mr. Geller, Mr. Miller, Mr. Koniecki, some of the others.

THE COURT: What is wrong about being in favor of bonuses for people who are successful in selling your property?

MR. DEVORKIN: There is nothing wrong about it. But under the cases, your Honor, it does show Mr. Blum's knowledge of what people are doing for the company, it shows his control --

THE COURT: It shows that some salesman made a misrepresentation because he sponsored a bonus plan?

MR. DEVORKIN: No, it does not show that directly, your Honor.

THE COURT: Do you think a jury would be

allowed to infer that?

MR. DEVORKIN: It shows -- no. I think it shows Mr. Blum is in a position of control and importance in the company, that he exercises influence over these discussions.

THE COURT: Give them to me.

MR. HOFFINGER: Your Honor, may I just say one word, if I may?

If Mr. Blum, if Mr. Blum were involved to the extent that he had knowledge from these particular meetings that misrepresentations were made to the public, I don't understand, and I don't suggest the government do it, I don't understand why all of the other directors were similarly indicted.

At these meetings not only did you have outside directors, you also have counsel to the corporation.

THE COURT: The courtroom was not big enough to handle all the directors if they were indicted, so the government, in a spirit of cooperation, only indicted enough to fill counsel table.

That is no argument. You know that. They can pick and choose whom they wish to indict.

MR. HOFFINGER: Your Honor, what I am saying is I do not believe that there was any discussion at those

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meetings that had anything at all to do with the alleged misrepresentation, none whatsoever.

THE COURT: The only way I can find out is by reading them.

MR. FLEMING: May I just take one more minute?

Your Honor asked Mr. Devorkin a question and that is if Mr. Devorkin thought it was proper to allow a jury to infer from what he read that misrepresentations by salesmen were discussed at this particular board meeting.

I did not hear his answer.

I, for one, do not believe it would be proper for a jury so to infer.

THE COURT: That was a rhetorical question.

MR. FLEMING: Good.

THE COURT: I have a calendar call, so I will see you tomorrow morning at 9:30.

(Pause)

(At the bench)

MR. WEIDNER: Mr. Friend hopes to get away for the holidays for two or three days with his family and has only been able to get plane reservations for 1:30 tomorrow afternoon and would like to be excused, if he could, for tomorrow afternoon.

THE COURT: Do you have any objection, Ms. Hynes?

MS. HYNES: Your Honor, I do, because tomorrow I expect to be reading Mr. Friend's grand jury testimony. I think we also have other witnesses to call.

We will be reading the testimony after the completion of the witnesses' testimony, which may take us beyond the morning.

THE COURT: I am afraid you are going to have to be here. There is a lot going on tomorrow. I think you ought to be present.

I think the government is going to introduce tomorrow what they consider their main testimony to hook you into this scheme. Consequently, I don't see how I can let you go.

DEFENDANT FRIEND: Your Honor, I started to say, I have already paid for the tickets. My children are coming in, two of them, from out of town from college and I have already paid for just a few days of a trip. Perhaps it was presumptuous out me. I thought they would read my testimony today.

The only evidence I know they are going to put in tomorrow is the grand jury testimony. Perhaps they can read it in the morning, because if I can leave by 12:15, I can make the 1:30 trip.

I have not been away for I don't know how many years now since this case has been going on and certainly during the case itself and I don't have to tell your Honor how much of a strain it has been on me and the family.

It would be very difficult, particularly since I have already paid for the tickets. If I hadn't paid for them, it wouldn't matter, Judge.

THE COURT: What are we going to do with the two live witnesses who are coming in to testify tomorrow?

DEFENDANT FRIEND: I didn't understand they relate to me.

THE COURT: They are going to read the grand jury testimony, they are going to read minutes, they hope, of board of directors meetings which tie you in.

This is their case against you. I don't see how you can be absent.

DEFENDANT FRIEND: I don't believe the minutes say anything about tying me in, Judge.

THE COURT: Look, all I know is that this is their contention. If that is their contention, I don't see how you can be absent.

DEFENDANT FRIEND: If they are going to go on on Tuesday, perhaps they can do it on Tuesday.

THE COURT: We are going to start at 9:30 on Tuesday and quite at 1:30.

DEFENDANT FRIEND: I don't mean to beat a dead horse, but when I testified before the grand jury and I pleaded with Ms. Hynes to give me a few days to see my daughter and she wouldn't do that, Judge, and then didn't call me anyway for that particular day, if there is any way that she can accommodate me on this so that I could be with my family, I would personally appreciate it.

THE COURT: Youwill have to work it out with her. But I will not allow you to be absent while the government's main case against you is being submitted. I can't.

MS. HYNES: Your Honor, I cannot say that the government is not going -- we have to use tomorrow to introduce this testimony and a lot of documents and we will not be able to do it on Tuesday. We have already stated to the Court that there is going to be another witness called on Tuesday.

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THE COURT: That is going to be a short witness, I am told. I would assume he will be in and out in an hour from the impression that was given to me.

MS. HYNES: Certainly on the government's direct case, the direct testimony, he will be a short witness. I don't know whether we will be finished reading all the documents given two witnesses tomorrow as well.

As your Honor has commented, we never finished two count witnesses in a day --

THE COURT: Well, that is your fault. I think your scheduling has been terrible here. It took four days off, Thursday, Friday, Saturday and Sunday, to set this case up and then you say you can't have a witness in until next Tuesday.

MS. HYNES: Your Honor, we were advised at 10:00 o'clock this morning if Mr. King can come in tomorrow he will be here tomorrow. That was a situation that arose simply because we were advised, and we got on the phone at the first break, which was lunchtime, and reached him out of state in Kansas.

THE COURT: I am talking about putting over two count witnesses for tomorrow.

We finished early today, we finished early yesterday; at twenty after four you ran out of witnesses, at lunchtime you ran out of witnesses.

MS. HYNES: We can only do what we have control over --

THE COURT: You have complete control over a case that you have been preparing for over a year, you have complete control over a case that has been on trial here for seven weeks and you have complete control over witnesses to give them a week's notice to get in here. That I won't take.

You can't tell me when you asked for two days off last week to get this case ready to wind up that you suddenly found out you had to have a witness who couldn't come in until tomorrow. You knew last Wednesday you needed him.

The day after Thanksgiving we were ready to sit and you don't have any witnesses.

This man lives in Tuckahoe. He didn't come from Albuquerque.

You ran out of witnesses yesterday, you ran out of them today.

If you can work it out, fine, but if they are going to put their main case against you tomorrow, you are going to have to be here.

DEFENDANT FRIEND: Okay. Thank you, sir.

MR. WEIDNER: We understand, your Honor.

(Adjournment taken to December 22, 1976 at 9:30 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Jack Morden	5504	5525		

EXHIBIT INDEX

Government	Identification	In Evidence
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586		5452
963		5456
813		5457
584		5459
418		5466
917		5467
919		5468
430		5479
433		5480
795		5484
1002		5488
218-I		5490
898		5496
717		5499
956,957		5503

EXHIBIT INDEX

Government	Identification	In Evidence
122-B		5518
122-W		5520
122-L		5521
122-X,122-Y		5523
612		5567
613		5568
806		5569
629		5570
149-H		5581
560		5589
887,885,579		5590
435		5609
948		5619
948-A		5621
Defendant Chester Carity and Daniel Friedman		
FK	5527	

UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al

December 22, 1976
9:30 A.M.

Trial Resumed

(In open court - jury present)

THE COURT: Good morning.

Next witness.

MR. KAUFMAN: The government calls Richard Gray.

RICHARD W. GRAY, called as a witness by the Government, being first duly sworn, testified as follows:

THE COURT: You may proceed.

MR. KAUFMAN: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mr. Gray, please keep your voice up so we can hear you back here.

Mr. Gray, how old are you?

A Thirty-eight.

Q Where do you live?

A Buffalo, New York.

Q Do you have a family?

A Yes, I do.

Q What does that family consist of?

A My wife and two sons.

Q What do you do for a living?

A I am an airline pilot.

Q How long have you been an airline pilot?

A Twelve years.

Q Do you currently have any land at Rio Rancho Estates?

A I no longer own it, no.

Q Did you at one time?

A Yes.

Q How much land?

A Five half acre lots and one commercial lot, about a third of an acre.

Q How did you first hear of Rio Rancho Estates?

A Through an invitational dinner in the Buffalo area.

Q Approximately when was that?

A Approximately April of '69.

Q Did you go to that dinner?

A Yes, I did.

Q Did you go with anyone else?

A Yes, my former wife.

Q Where was that dinner if you recall?

A At a restaurant in suburban Buffalo, Elm Manor.

Q Were films shown at that dinner?

A Yes, more than one.

Q Were there speeches from the front of the room at that dinner?

A Yes, there were.

Q Did you receive brochures at that dinner?

A Yes, I did.

Q Did you buy land at that dinner?

A Yes, I did.

Q How much land?

A Five half acre lots contiguous.

Q Why did you buy that land?

A As an investment. It looked like a fantastic investment to get into.

Q I show you what has been marked as Government Exhibit 121-F for identification and ask if you can identify that.

A Yes, I can. It is the document I signed at the dinner.

MR. KAUFMAN: The government offers 121-F.

MR. ARKIN: Do you have a better copy, Mr. Kaufman?

MR. KAUFMAN: That is the best that was provided.

MR. ARKIN: We have no objection.

(Government Exhibit 121-F received in evidence)

MR. ARKIN: Would you like to substitute my copy, Mr. Kaufman, which may be a little bit better than your copy.

MR. KAUFMAN: Sure.

MR. ARKIN: May I have back your copy.

MR. KAUFMAN: Yes, I just want to switch the exhibit tag.

MR. ARKIN: Thank you.

MR. KAUFMAN: If I may just read from a portion of this, your Honor.

(Mr. Kaufman read from Government Exhibit 121-F in evidence to the jury)

Q Mr. Gray, was anything said to you at that dinner about resale of your land?

MR. FLEMING: I object to the form of

the question.

THE COURT: Sustained.

Q Mr. Gray, what was said to you at the dinner?

A That the investment was guaranteed. There was no way I could lose and should I ever want to resell it that Rio Rancho Estates would buy it back from me.

Q Did there come a time that you went to Rio Rancho Estates?

A Yes, I visited the first time in June of '69.

Q Was that on a company sponsored tour or did you go there yourself?

A I went there myself.

Q Did you travel with anyone else?

A Yes, my former wife.

Q Did you inform Rio Rancho that you were coming ahead of time?

A Yes, I did.

Q Where did you stay when you were out there?

A At the Panorama Inn at Rio Rancho.

Q Did you take any company sponsored tours while you were in Albuquerque?

A Yes, I did. There was a tour provided of Albuquerque by Rio Rancho.

Q What types of place- did they take you to?

A We visited the entire city, all the residential areas, and any other points of interest, the Tramway and the Old Town, downtown. Luncheon was provided at an old restaurant. It was an excellent tour.

Q While you were on this tour did you see vacant land in and around the city of Albuquerque?

A Yes, I did.

Q Was anything said to you about that vacant land?

A Yes, it was --

MR. ARKIN: May we have in respect to any particular vacant land.

THE COURT: Where abouts was this said? You have a picture there of Albuquerque. The defendants want to know where were you when this statement was made.

THE WITNESS: Your Honor, both at the dinner and at the visit to Rio Rancho, all of the land surrounding Albuquerque was accounted for in one way or another.

THE COURT: What did they tell you to account for it?

THE WITNESS: That it was either government reservations or for some other reason that I cannot remember now, it could not be used for residential expansion.

That was done both at the dinner and on the tour and I can remember particularly to the south and to the northeast and to the west there was one other land development to the west, Paradise Hills by Horizon and Rio Rancho to the northwest.

We were made aware over and over again that that was the only way that any expansion of the Albuquerque area could take place.

Q Did you eventually get out to see your property at Rio Rarcho?

A Yes, I did.

Q How did you get out to see your property?

A By a salesman with a car with a radio.

Q Did you see your land?

A Yes, I did.

Q Did your salesman say anything to you about your land?

A He did, but I don't recall in specifics now what he said. We went and looked at it and he showed me where the boundaries were and he commented on the value of it and what a good deal I had.

Q What did he say about the value?

MR. ARKIN: He said he has no recollection.

THE COURT: He didn't say that. He said he couldn't give you the specifics.

A I could not give you a verbatim word for word account, but the discussion was around the value of the land and what a good deal it was, the salesman had been a school teacher in Michigan and was living there now and had done some building and we were talking about the value of the land and what a good deal it was and what a good investment was and how much he would buy and so on and there was no way I could lose and how much it had already appreciated in value since I had bought it in the two months since I had bought it.

Q Did your salesman take youto see any other land?

A Yes, he did. While we were in the car and discussing the good investment that I had there, my feeling was that it was such a good investment that maybe I would like to have more or in that line of thinking and I asked him about it and he said I don't know if there is any more left. I will call in and see if there is any more left and he called on the radio and the response was there were one or two pieces left for sale.

end t

T2a.am

Q Did he have a two-way radio in his car?

A Yes, he did.

And we went -- we were in unit 16. We went to unit 17, and there were ranchettes there that were five acre parcels being sold, and also there was some commercial property, it was all zoned.

Through our discussion, I became convinced that a commercial lot there would be a good investment, and I subsequently purchased a commercial lot in unit 17 that same day.

Q I show you what has been marked as 121-B for identification, and ask you if you can identify that (handing).

A Yes, I can.

It's the purchase agreement that I signed that day, June 2nd.

Q For the commercial land?

A Yes.

MR. KAUFMAN: The government offers 121-B.

MR. ARKIN: Fine. No objection.

XXX

(Government's Exhibit No. 121-B received in evidence.)

MR. KAUFMAN: May I just read from this briefly, your Honor?

THE COURT: Yes.

(Mr. Kaufman read from Government's Exhibit 121-B in evidence to the jury.)

Q Did there come a time when you visited Albuquerque and Rio Rancho again?

A Yes, a year later, June, 1970.

Q And did you go with anyone on that occasion?

A Yes. My present wife.

Q And did you tell Rio Rancho ahead of time that you were coming then?

A Yes, I did.

Q And did you go on company-sponsored tours in Albuquerque, again?

A Yes. I stayed at the same place, Panorama Inn, and everything was just about identical, the company tour of Albuquerque and also visited the land by the same means.

Q Did you see your land both in unit 17 and unit 17?

A Yes, I did.

Q Did the salesman who was with you on that occasion say anything to you with respect to your land?

A It had appreciated a great deal in value, again.

I don't remember the figures at this time, but we were impressed at the amount that it had appreciated, according to them, on paper in any case and it looked like a good investment, it was worth that much more money. But as I --

Q Did there come a time when you tried to resell your property?

A Yes, there did.

Q About when was that?

A The summer of 1972, June, July -- July of 1972, probably.

Q And what initial effort did you make to resell your property?

A Well, initially, as I had been led to understand, I called the Rio Rancho office at Rio Rancho and told them that I had reason for wanting to sell the land and get my value out of it at that time and, as I had been led to believe, I thought it was a simple matter of letting them know and they would take it back and it would be completed rather quickly.

Q And what response did you get?

A That they were not in the business of buying back land, that I had been misinformed and misled, that they could do nothing to help me whatsoever.

Q Did you and your wife contact Rio Rancho Estates again after that initial phone call?

A Yes, numerous times, all for the same purpose.

Q And did they ever agree to buy your land back?

A No, sir.

Q Did you make any other efforts to try to resell your land?

A Yes, we did. We listed it with a commercial realtor in the Albuquerque area.

Q Do you recall the name of that realtor?

A Yes. Heins.

Q And did he list your property?

A Yes, he did.

Q Do you recall for about how long your property was listed with Heins?

A It was listed for at least six months, it may have been a year.

Q Was he able to resell your property?

A No, he was not.

Q How long or until when did you continue to make payments on your land at Rio Rancho?

A Until the summer of 1974, I believe August, July or August of 1974.

Q And how did you make payments for your land at Rio Rancho?

A We had coupons with envelopes provided for the payment and we made it by personal check with the coupon and the envelope provided to a bank, the Chemical Bank.

Q Where was Chemical Bank?

A In New York.

Q Do you recall how much you made in the way of payments to Rio Rancho?

A Approximately $15,000.

Q I show you what have been marked 121-A and 121-E (handing).

Do you recognize those?

A Yes.

Q And what are these?

A The statement of the amount I had already paid and the amount due on both parcels of land at Rio Rancho.

MR. KAUFMAN: The government offers 121-A and 121-E.

MR. ARKIN: No objection.

XXX (Government's Exhibit Nos. 121-A and 121-E, respectively, were received in evidence.)

MR. KAUFMAN: If I may just read from these briefly, your Honor?

THE COURT: Yes.

(Mr. Kaufman read from Government's Exhibits 121-A and 121-E, respectively, in evidence to the jury.)

Q Did you stop making payments after August of 1974?

A Yes, I did.

Q Why was that?

MR. ARKIN: Objection.

THE COURT: Overruled.

A I had continued to make payments on it for a number of years because of the amount I had already invested in it and didn't want to lose out what I had already invested.

It took me that long to realize that it didn't matter how much I had invested, there was no value in the land to continue investing in.

MR. ARKIN: I move to strike that, your Honor.

THE COURT: Overruled.

A The reason I realized this was --

THE COURT: Wait, wait. You weren't asked that. You have given the reason.

Q At that time you stopped making further payments, is that right?

A Yes, sir.

Q And did Rio Rancho eventually cancel your property?

A Yes, they did.

Q I show you what has been marked Exhibit 121-H for identification (handing).

Can you identify that?

A Yes, I can.

Q Was this the letter that you and your wife received from Rio Rancho?

A Yes, it is. That's the original.

MR. KAUFMAN: The government offers 121-H.

MR. ARKIN: No objection.

XXX (Government's Exhibit No. 121-H received in evidence.)

MR. KAUFMAN: If I may read this, your Honor?

THE COURT: All right.

(Mr. Kaufman read from Government's Exhibit 121-H in evidence to the jury.)

MR. KAUFMAN: No further questions, your Honor.

XXX CROSS EXAMINATION

BY MR. ARKIN:

Q Mr. Gray, I am Stanley Arkin.

Your first purchases were in unit 16?

A Yes, sir.

Q And you visited unit 16 how long after you purchased your property there?

A About two months.

Q And you saw your actual parcels of property, didn't you?

A Yes, sir.

Q Did you also see any other parts of Rio Rancho at that time?

A Yes, sir.

Q You stayed at the Panorama Inn, didn't you?

A Yes, sir.

Q And around the Inn is near a portion of unit 16, is it not?

A Yes, sir.

Q And you saw a portion of unit 16 which had homes in it, didn't you?

A Yes, sir.

Q Do you recall how many homes you saw during the time you were there?

A No, sir.

Q Do you recall where your land was in relation to the homes which were in unit 16?

A I don't know the actual distance. It seemed quite a distance. More than a mile, I would say, maybe several miles.

Q Well, you say it is either a mile or several miles?

A Not close, but that's relative, you know. I couldn't say. Two or three miles.

Q Your occupation is an airline pilot, is it not?

A Yes.

Q And accuracy in terms of distances is very important to your occupation, I take it?

A True.

Q Where you land your plane and where you take off, you got to know where you are, don't you?

A Yes.

Q You were out in Rio Rancho and you saw your property in relation to the developed area?

A Yes.

Q And you are trained in computing or estimating distances, aren't you?

A We normally have equipment that measures the distance.

Q Well, if the equipment goes back, you are --

A I'm not an expert on distance. I gave you the best estimate.

No, I don't have any power to look and say how far something is.

Q Could you see the developed area from your lots?

A No.

Q You had five lots?

A Yes.

Q In what direction from the developed area, I am talking about north, east, south, west, were your particular lots?

A West.

Q Due west?

A Approximately due west. Within 20 or 30 degrees of due west, anyway.

Q Do you recall having seen out there Route 528?

A What's the number of the route?

Q The road in front of Panorama Inn.

A Yes. I didn't remember the name, the number of it.

Q Do you know what I am talking about now, the road in front of Panorama Inn?

A Yes.

Q And do you recall an intersection of that road which runs by Panorama Inn about, oh, half a mile north of Panorama Inn?

A Yes.

Q From that intersection, do you recall how far your lots were?

A Give me a minute to try and think on it.

(Pause.)

A A best guess would be two miles to the west that I -- you know, I couldn't -- I didn't measure it.

Q About two miles to the west.

And do you know how far unit 16 extended to the west from that intersection of 528?

A I don't know the distance. It seemed like a long way. I don't know.

Q So unit 16 extended some distance west?

A Yes.

(Continued on next page.)

Q And then your lots were some distance further west, is that correct?

A Say that again.

Q Unit 16 extended some distance west from the intersection you just described?

A Yes.

Q And your lots were some distance further west from the end of the developed portion of Unit 16?

A Yes. Because the way you stated it, it sounded like my lots were outside of 16, that's why I didn't understand the question.

Q Your lots were in 16?

A Yes.

Q But your lots were further west of 16?

A In 16.

Are you saying in or than?

Q No, in 16.

A I thought you said than.

Q I have a frog in my throat. It's early in the morning. I'm sorry.

I will stand a little closer.

So the lots you had were a little further west from the border or end of Unit 16 at that time, is that correct?

A From the developed portion.

MR. KAUFMAN: If Mr. Arkin would say from the developed portion of Unit 16 --

A Yes.

Q The developed portion of Unit 16.

A It was a long way from the developed portion. I couldn't see the developed portion at all.

Q You say it was a mile to some miles?

A It was in excess of a mile. It may have been two or three miles. I haven't been there in a number of years.

Q But you would say it was about two miles from the intersection of 528, the road that went past Panorama Inn?

A We were in a car, somebody else was driving. It was probably more than two miles.

Q You have been to Rio Rancho the last time in 1970?

A Yes.

Q So at that particular point, you don't know how far out Unit 16 extends, do you?

A Yes. I have flown over it numerous times since. I see that there is development.

Q Are you able to identify from the air your lots?

A No.

Q Are you able to identify Unit 16 from the air?

A The boundaries? No.

Q Are you able to tell how much Unit 16 has developed since you were last there on the ground?

A I don't notice a significant difference, but it does look more developed.

Q Well, when you fly over Unit 16 from the air, at what altitude do you fly over it?

A Approximately thirty-five miles; 35,000 feet, give or take a few thousand.

Q And how long does it take to pass over Rio Rancho in an American Airlines jetliner?

A Probably I have a couple of minutes to look at it.

Q As you are looking out of your window as a pilot, you are able to identify Unit 16 from the air, am I correct?

A There are no boundaries that I can recognize from unit to unit.

I only can see the entire development.

Q And you can tell from there that there has been development, but you can't tell how much?

A Correct.

Q And you can't tell how close your particular parcels of property Unit 16, the developed portion is right now?

A That's correct.

Q You testified that you stopped making your payments because you had decided that your land in Unit 16 was worthless?

A That's correct.

Q Had you consulted any appraisers in the Albuquerque area regarding that?

A The Heinz Realty.

Q No. I am asking you about appraisers.

A No.

Q Did Mr. Heinz ever tell you your land was valueless?

A Indirectly.

Q Yes or no.

A Indirectly.

Q No.

Did he ever tell you it was valueless? Yes or no?

A Verbatim, no.

In effect, yes.

Q In effect, yes, you say?

A In effect, yes.

Q He told you your land in Unit 16 had no value at all?

A No value to me. It could not be sold.

Q Did you list your land with Mr. Heinz?

A Yes, I did.

Q The land in Unit 16?

A Yes.

Q Or just the commercial property?

A Both.

Q And Mr. Heinz said to you it had no value?

A Not to me. Through him it could not be sold.

Q Did he list it at any particular price?

A Any price.

I believe -- I believe he listed it at the price that I paid for it.

Q He listed it at that price, but he told you it had no value?

A It couldn't be sold, so how could you determine a value?

Q No. Did he tell you that? I am not asking whether he sold it or not.

A He -- I don't recall the exact words in the conversation, but, in effect, the assessment was that there was no value in it because I couldn't sell it.

MR. ARKIN: Would you mark this.

(Defendants Howard Friedman and Henry Hoffman Exhibit FM marked for identification)

Q Do you recognize FM for identification, sir (handing)?

A Yes, I recognize it.

Q Is that something -- will you tell his Honor and the jury what this is, referring to FM?

A It's a note from Paul Heinz --

Q To you?

A Yes, sir.

MR. ARKIN: We offer it.

MR. KAUFMAN: No objection.

(Defendants Howard Friedman and Henry Hoffman Exhibit FM received in evidence)

xx

Q You say that Mr. Heinz told you indirectly in words or substance that your land had no value?

A Yes, that there was no point in relisting it.

Q All right.

MR. ARKIN: May I, your Honor, read briefly from Exhibit FM in evidence?

THE COURT: You may.

(Mr. Arkin read from Defendants Exhibit FM in evidence to the jury)

Q August 19, 1974, is that before or after you stopped making your payments?

A About simultaneously, I believe.

(Mr. Arkin continued reading from Defendants Exhibit FM in evidence to the jury)

Q Mr. Gray, your lots were in Unit 16, Block 75, were they not?

A Yes.

Q And your lots were 24, 25, 26, 27 and 28?

A Yes.

Q And Mr. Heinz did write to you and say, "Current value, $5850"?

A On paper, yes.

Q He did say that on paper to you in August of 1974?

A Yes, sir.

Q Did you speak to him subsequent to that?

A I don't believe so. Prior to it, but not subsequent.

(Mr. Arkin continued reading from Defendants Exhibit FM in evidence to the jury)

Q Did you make any other efforts to sell your land, such as placing ads in local newspapers?

A No, sir.

Q Did you consult other brokers in Albuquerque?

A No, sir.

Q You have a lawyer, don't you?

A Yes, sir.

Q What is his name?

A I have more than one lawyer.

Q Well, you have a lawyer named Mr. Till.

A Tills.

Q Tills?

A Yes.

Q And you had that lawyer in 1974, didn't you?

A Yes.

Q Did you ask him to make any efforts to consult appraisers or other people who deal with real estate to determine whether or not your property had value?

A I believe I did. I don't remember specifically. I asked him for recommendations, yes.

Q Did he give you any recommendations?

A Yes.

Q Who did he give you as a recommendation?

A No. He recommended tha I discontinue paying on it.

Q No. I am asking you whether he recommended to you -- please strike that as non-responsive, your Honor.

THE COURT: No. That is the way he understood the question. That is the way I understood it.

MR. ARKIN: I asked him any recommendation regarding the value of the land.

THE COURT: You didn't say that.

Q Did he recommend that you find an appraiser or anybody like that?

A In order to answer your question, I asked him what to do.

Q Did you ask him about --

A I asked him to go look into it, to come back with a recommendation as to what I should do.

I do not know what he did to come up with his recommendation. I do not know--

Q He told you to stop your payments, is that right?

A He could see no advantage in continuing.

Q No.

A Yes.

Q He told you to stop the payments?

A Yes, that that would be the best course of action, yes.

Q Did you consult him in particular as to whether or not you should continue your payments in August of 1974?

A Yes.

Q Had you at that time heard anything about any government action in respect to this particular case?

A No.

Q You had no communication from anybody in the government about Rio Rancho?

A Not at that point. I don't believe so. Not that I recall.

MR. ARKIN: Mark this, please.

(Defendants Henry Hoffman and Howard Friedman Exhibit FN marked for identification)

x

Q Do you recognize FN, Mr. Gray (handing)?

A Not from down there (indicating).

(Pause)

A Frankly, I don't recognize it immediately, but it is obvious it has my name on it and --

Q Your handwriting?

A No, probably my wife's handwriting. It's not my handwriting.

Q Do you recognize your wife's handwriting?

A It's printing, so it's not too easy to recognize as writing.

Q Do you recognize her printing?

A It looks like it, yes.

Q That is your first wife Allene?

A No, my present wife.

Q Your second wife Dianne?

A Yes.

I should clarify, I don't recall the first government inquiry.

The sequence of events I don't recall.

Q Do you recall receiving a letter, a questionnaire from the government sometime in July of 1974?

A I did not recall it, no.

Q You do not or you did not?

A When you asked the question, I did not.

Q Now you do?

A I do not recall the first time that the government contacted me regarding Rio Rancho.

Q After looking at that, does it refresh your recollection that you received the questionnaire in July of 1974?

A Yes.

Q So that you received a communication from the government regarding Rio Rancho before you went to your lawyer, isn't that so?

A Quite possibly, yes.

Q And before you stopped making payments?

A It appears so, yes.

Q And the questionnaire communication you received was one of the reasons you went to see your lawyer, isn't that the case?

A Probably.

Q Was there a period of time when you had the idea of possibly moving down to Rio Rancho and living there?

A No.

Q You have been an airline pilot for about twelve years?

A Yes.

Q Your present wife is also airlines personnel, is she not?

A She had been.

Q What was she?

A She was a flight attendant.

Q Stewardess?

A New term, flight attendant.

Q Flight attendant, right.

A We have male flight attendants also.

Q You and she had talked at one time about moving to Rio Rancho?

A No, we never considered living in Rio Rancho.

Q What about living in Albuquerque?

A No.

Q You never considered leaving the northeast and moving down to the south?

A We at one time considered the Denver, Rocky Mountain area.

Q You and she never had conversations about moving down to Rio Rancho?

A No. Not that I recall. We possibly, when we went through there said this wouldnot be a bad place to live, but we never seriously contemplated living there.

Q You might have said, this would not be a bad place to live?

A I am sure, because I think it is not a bad place to live.

Q The first time that you visited Rio Rancho was a couple of months after you purchased your property, isn't that right?

A Yes.

Q That would have been in 1969.

A Yes, June.

(Defendant Howard Friedman and Henry Hoffman Exhibit FO marked for identification)

x

Q Are you able to recognize FO for identification?

A Yes, I am.

Q Is this your signature, referring to the middle of the page?

A Yes, it is.

Q This is a form which you signed?

A Yes, it is.

MR. ARKIN: We offer it.

MR. KAUFMAN: No objection.

(Defendant Howard Friedman and Henry Hoffman Exhibit FO received in evidence) xxx

(Defendant Howard Friedman and Henry Hoffman Exhibit FP marked for identification) xx

Q Mr. Gray, I show you FP. Do you recognize this form?

A Yes.

Q That is your signature on it?

A Yes, it is.

MR. ARKIN: We offer FP.

MR. KAUFMAN: Could I see FO again, Mr. Arkin?

MR. ARKIN: Sure.

(Pause)

MR. KAUFMAN: No objection.

(Defendant Howard Friedman and Henry Hoffman Exhibit FP received in evidence) xx

BY MR. ARKIN:

Q You say you went down to Rio Rancho in June of 1969 with Allene, your first wife, is that correct?

A That's correct.

Q You went down on your own?

A Not with --

Q Not with a company tour?

A Correct.

Q As an airline pilot, you got a certain dispensation or cut rate in your fare, didn't you?

A That's correct.

Q It cost you about what, $20 to fly down?

A More than that. I don't recall, probably less than a hundred or in the neighborhood of a hundred.

Q For both of you?

A For the family.

Q For the whole family? You know that you got a certain vacation travel allowance from Rio Rancho when you flew down there?

A Yes.

Q About $400?

A Yes.

Q You stayed at the Panorama Inn at that time?

A Yes, vacation travel allowance was applied against the property value on the last payment.

Q Yes, but you received that vacation travel allowance?

A I did not receive anything.

Q You received a credit of $400?

A Correct.

Q It cost you about $100 to fly down with your family?

A In that neighborhood.

Q When you were down there with your family, you say you took a tour all around Albuquerque, right?

A Yes, correct.

Q You saw various residential areas of Albuquerque?

A Yes.

Q You went to the tramway?

A Yes.

Q From the tramway were you able to see Albuquerque from there?

A Yes.

Q Did you also see Rio Rancho from the top of the tramway?

A Yes.

Q You saw the roadway leading from Albuquerque to Rio Rancho?

A I have seen it. I don't know if I saw it from there, I assume so.

Q You saw it at some other time in any event?

A I am familiar with it.

Q About how long did you spend looking around

Albuquerque, do you recall that?

A I was there two nights anyway. I was there the one day and I think another day. I may have been there two nights minimum, four nights maximum, I think two or three nights.

Q Did you have your kids with you then?

A Yes.

Q Did you have a car?

A I believe I rented a car, yes.

Q You drove around?

A A little bit, yes.

Q You took the kids into the Old Town?

A I think we just did that with the tour. I was in the Old Town, yes.

Q Did you take the kids to other parts of Albuquerque?

A I don't remember now where we went. I think mostly we stayed at Panorama Inn and did some riding. Most of around Albuquerque was with the tour.

Q But you also had the car then?

A I think so.

Q When you saw the area -- excuse me

Did you see Albuquerque before you saw your particular piece of property?

A Yes.

Q You also saw the developed portions of Rio Rancho before you saw your particular piece of property, didn't you?

A I saw them. There were model homes I went through. I don't recall whether I went through those.

Q You saw the motel?

A Yes.

Q Did you see any other installations out there that you recall, any particular buildings?

A I am not sure I understand what you mean.

Q Did you see any markets or stores or that kind of thing?

A There was the Panorama Inn and then there was an office for Rio Rancho. They were not located with the clubhouse. The homes that were built. I don't recall seeing any stores. There was an industrial park to the north on the other side.

Q And you saw a clubhouse you say?

A Yes. I think a swimming pool and I don't know what else.

Q At that time you were very impressed with the area, weren't you?

A I thought it looked nice, yes.

Q You said you were very impressed with it?

A Yes.

Q Then youwent out on one day with the salesman in a car to see your piece of property?

A Right.

Q When you were in the car with the salesman after you had some discussion, didn't you say to him, and not he to you, that you were interested in buying more property?

A Probably, yes.

Q It was your idea?

A I think so.

Q Then he showed you some other property?

A Through our discussion I think I came to the conclusion yes, and I asked him about it.

Q You asked him?

A Yes.

Q And then he showed you some other property at your request?

A Yes.

Q And you bought another piece of property at your request?

A Yes.

Q By the way, you knew, didn't you, that when you bought your property in Unit 16, your five lots, that there were no utilities in place at that time?

A I think so.

Q You knew that you had a right to exchange a half acre lot into a building lot into the developed area, didn't you?

A I didn't know there was a limit to a half acre. I understood I could exchange my land for land closer in for building at any time, yes.

Q You never tried to do that because you didn't want to move out there, is that right?

A No, that is not correct. I did. That was one of the attempts I made in trying to sell the land, I thought possibly I could trade in to where they were building and then sell that lot. But I was told I could not do that.

Q You knew you couldn't do it from the contract, didn't you?

A I didn't know it. Maybe it was there in writing and I didn't read it, but I made the inquiry and was informed I could not.

Q Did you receive certain property reports or documents when you bought the property originally at the dinner party?

A Say that again.

Q Did you receive certain documents, aside from your contract, from the company when you bought the property in 1969?

A Documents or brochures?

I received a lot. I don't recall all what it was.

Q Do you recall whether you received an offering statement?

A I don't recall in specific, but I think I did.

Q Would you have read what you received?

A I don't know if I would have read every word.

Q But you would have read it by and large?

A I think so.

Q You then went out there a second time in 1970, that is with Dianne, your second wife?

A Yes.

Q By the way, before you went out there, did you have the property which you owned transferred from your joint names, of Allene and you, Richard Gray, to you alone?

A I don't believe that was done until we went out there.

Q Until after you went out there?

A I believe --

Q First you went to Albuquerque or rather Rio Rancho in 1970 with your second wife, is that correct?

A Yes.

Q And then you came back?

A Yes.

Q And then you had the name on the property changed from Allene and Richard Gray to Richard Gray alone?

A If you are telling me that is the way it is, then I assume it was. I don't recall. The way I think I remember it --

Q Tell me that way.

A Is that when my ex-wife made provision with our attorneys as to who was getting what, but at that time did not do anything with the names at the Rio Rancho office, but had just done it elsewhere.

Then I thought that I took care of the names when I made the visit to Rio Rancho in June of '70. But I wouldn't bet anything on that now because I don't remember. I know it was done. I don't know when it was done.

Q Part of your marital settlement though it was agreed that you would get the Rio Rancho property?

A Yes.

Q And your wife would get some other property?

A Yes. She wasn't interested in Rio Rancho.

Q But you were, yes?

A Yes.

Q Now, you said on direct examination that you made an effort to resell the land by contacting Rio Rancno?

A Yes.

Q And you called them by telephone?

A Yes, I did.

Q That's at the 800 number?

A I don't think I had the 800 number. At the time I was in Colorado, I don't recall --

Q You know there are toll free numbers?

MR. KAUFMAN: Your Honor, Mr. Arkin has been interrupting the witness in the middle of answers.

THE COURT: Let him finish.

A I know I made some phone call. I know on the phone call I was informed of the 800 number. I know there was an 800 number because I know when I was talking without it I was told there was one, but I don't think I used it.

Q You know there are toll free numbers to Albuquerque?

A I know it now.

Q You were told that by telephone when you spoke to them?

A Yes.

Q When was it you say you called up Rio Rancho to ask about resale?

A Either June or July of 1972.

Q Somebody at Rio Rancho, you say, said that you had been misled?

A Yes, I said I was told that I could resell it. They told me, no, either I misunderstood -- that that was not correct. That either I had been misled or I misunderstood. It was not correct.

Q It was not correct that the company would buy it back from you, is that right?

A That's right.

Q So you had called up the company to ask them to buy it back from you?

A Yes.

Q Not to resell it to somebody else for you?

A Either. I didn't care how it was done.

Q You were told at that time that the company didn't do that, is that right?

A Correct.

Q You said somebody else had told you that they do do it?

A I was very shocked and surprised when I learned that, yes.

Q Answer my question, sir.

Did you tell them that somebody had told y u the company does do that?

A Yes, I did tell them that.

Q Who had told you that?

A At the original presentation and offering dinner before I had purchased the land, this was made very clear that there was a no lose thing because it could be sold back at any time.

Q I asked who told you that.

A By name?

Q By name, if you know.

A I don't know the name of the salesman.

Q Was it a salesman or sales woman?

A Man.

Q Cordorva, does that name refresh your recollection?

A It was not the name of the salesman in the Buffalo area. It is the name of somebody that we talked to in Rio Rancho that handled our account apparently.

Q Was it your salesman in the Buffalo area that told you that?

A Yes.

Q That was the person who said that?

A Yes, both the manager and the salesman that sat at our table that handled the paper work.

Q There were two salesmen at your table?

A No, one manager for the dinner, for the area, BTG Realty, Ross Montog, and the name for my salesman as I remember is something like Carlton or Carlson, but I don't remember.

Q You don't remember?

A Mostly I don't remember. I do remember he made me feel, you know, I could give it back at any time.

Q Just wait for a question, sir.

A Right.

Q You were aware, weren't you, that when you stopped making payments that you stood to lose everything you hadpaid previously?

A Yes, sir.

Q You knew that that was in the contract?

A Yes, sir.

Q You stopped making payments in August of 1974, is that correct?

A I believe that's correct.

Q You knew that the company could forfeit you within 60 days if you didn't make payments?

A That's right.

Q They didn't forfeit you in 60 days, did they?

A I guess not. I don't know how many days they took to do it. No, I am sure it was more than 60 days.

Q You finally received a letter in May of 1975 saying that you had been forfeited, is that right?

A I didn't remember the date, but that's the letter, so May, that's a long time later.

Q During that time you received other letters?

A I guess so. Yes, I am sure.

Q Did you receive a letter advising you that if you didn't pay you might be forfeited?

A Yes.

Q And then finally in May of 1975, that's when you were told some nine months later that you had been forfeited, is that right?

A Yes.

MR. ARKIN: I have nothing else.

THE COURT: Mr. Fleming.

CROSS EXAMINATION

BY MR. FLEMING:

Q Mr. Gray, you say you spoke to your lawyer and your lawyer recommended that you discontinue payments, is that correct?

A In essence, yes.

Q That was after you had received a questionnaire from the prosecutor's office?

A Yes.

Q Which you mentioned to your lawyer?

A I am sure I did.

Q I want you to search your recollection and answer this question yes or no.

When you discussed this matter with your lawyer, did your lawyer tell you in words or substance that any investigation of Rio Rancho by a prosecuting office would kill the value of your land?

A No.

Q That was not a consideration?

MR. KAUFMAN: Objection, your Honor. He asked what was told to him by the lawer.

THE COURT: The answer was no.

Q Now, you testified that at the dinner when you first purchased property you were told by a salesman the investment was guaranteed, no way you could lose on it, if you ever wanted to sell it, Rio Rancho would buy it back from you.

Is that in substance an accurate statement of what you testified to on direct examination?

A Yes, sir.

Q That is what you were told at the dinner?

A Yes, sir.

Q That if you ever wanted to sell the property, Rio Rancho would buy it back from you?

A Yes, sir.

Q Did that make you a little suspicious?

A No.

Q Have you -- by the way, what do you earn as an airline pilot?

A 40 some odd thousand dollars annually.

Q Excuse me?

A Annually. You didn't specify whether you were talking monthly or annually. Annually.

Q Is your wife still employed?

A No, she's not.

Q Now, I take it you have bought all sorts of things in your life, have you not, appliances, television sets?

A Certainly.

Q Do you own a home?

A Yes.

Q You bought land, did you buy the property when you bought the home?

A Yes.

Q Have you ever in your life bought something from someone when they said to you, you keep it and if at any time you don't want it or don't like it, we'll buy it back from you?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Overruled.

A Yes, as a matter of fact I have. There is something recently. I am trying to remember what it was, suits of clothes.

Q What is the name of the place?

A Kleinance Store in Buffalo for one. There is something just recently.

MR. KAUFMAN: The witness hasn't finished his answer.

A The answer is yes, I have.

Q You say you bought a suit of clothes and they told you at any time you didn't like it, at any time you could sell it back to them?

A They would take it back.

Q They would take it back and give you all your money back?

A Yes.

Q What was the other occasion when that happened?

This more recent occasion.

A I am trying to remember. I don't remember but something very recently that, you know, it's not common, but I have had it more than once.

Q Did you ever take the suit of clothes back?

A No. I have taken things back, yes, and gotten my money back, yes.

Q In any event, you have had experiences where people tell you you buy it, you buy it on terms, you pay over terms and if at any time you don't want it any more, we will buy it back from you?

A Yes.

Q Therefore when the salesman at the dinner told you that you buy this property, you buy it on terms, you pay and if at any time you want to give it back to us, we will give you your money back, that did not bother you at all?

A That's correct.

Q It did not make you suspicious?

A No. That has been my experience with Sears Stores.

Q Sears Store

A Yes.

Q At any time you want to return something to

Sears?

A Satisfaction guaranteed, money back.

Q For how long?

A That's their policy. I have taken things back years later.

Q Years later?

A Yes, I have.

Q And gotten full return on your money?

A Yes. That's one reason I continue to deal with them.

Q You are a good ad for them.

Did you ever buy any securities?

A No.

Q Stock?

A No.

MR. FLEMING: Do you have the purchase contract?

Q Is April 23, 1969 your first purchase?

A I didn't remember the date, but it sounds like it. I am sure if that's the date there, it is.

MR. FLEMING: Is this the first one, Mr. Kaufman?

Q 121-F is a copy of the contract? That was two and a half acres, unit 16, was that your first purchase?

A Yes.

Q That was at the sales dinner?

A Yes.

Q You read the contract?

A I am sure I must have.

Q Would you read this paragraph, the last full printed paragraph?

A We understand that by signing below we are offering to purchase blank out the blank under conditions set forth and it is agreed that this purchase agreement sets forth the entire agreement between the parties, that no agent or representative of the seller shall have any authority whatsoever to change or modify the agreement in any manner or to make any other agreement or representation on behalf of the seller and that if Rio Rancho Estates, Inc. signs and returns to me a copy hereof, this will be a binding contract which may not be modified or amended except in writing signed by the buyer and the seller.

Q Is there anything in the contract which says that if at any time you want to give the property back to Rio Rancho they will buy it back from you?

A No, sir.

Q When you read that paragraph, did you turn to your salesman and say, look, this paragraph says --

A I am sure I did know.

Q You did not?

A Had I, I wouldn't have bought it.

Q Your answer is you are sure you did not, is that correct?

A Ask the --

THE COURT: We will have a recess.

(Recess.)

MR. ARKIN: Your Honor, may I ask one brief question?

THE COURT: Yes.

MR. ARKIN: Mr. Hoffman has an obligation which he has to fulfill after lunch. It will take him about 45 minutes or an hour. May he be excused during that period?

THE COURT: That depends upon whether the government will read in testimony that links Mr. Hoffman in. We had this yesterday with Mr. Friend. You will have to check with Ms. Hynes.

MR. ARKIN: All right.

(Continued on next page.)

(In open court; jury present.)

THE COURT: You may proceed.

CROSS EXAMINATION (Continued)

BY MR. FLEMING:

Q Mr. Gray, you testified you made a visit to Rio Rancho, I guess two visits, and did you testify on the second trip the salesman at Rio Rancho out at the property told you that your land had appreciated -- the land that you owned had appreciated in value?

A Yes, sir.

Q I think you said at least on paper, is that correct?

A Yes, yes.

Q All right.

Am I correct that what the salesman told you was that Rio Rancho itself was selling, was selling comparable property at a particular price?

A Correct.

Q That's what he said, didn't he?

A Yes.

Q And you, of course, knew that Rio Rancho had a nationwide sales program?

A I knew it was very wide. I assumed nationwide, yes.

Q Sure. You travel and invested a substantial amount of money in the sale of their land?

A Obviously.

Q Had a sales force?

A Yes.

Q And what you were told was that Rio Rancho was selling comparable property at a particular price?

A Yes.

Q And from that, you assumed that that, therefore, represented the value of the piece of land you owned?

A This was the effect of the statement, yes.

Q That was your assumption from that statement?

A Not only my assumption, this was the purpose of the explanation.

Q The salesman said to you --

A In other words, "How much is my land worth?"

"It's worth that much because we are selling it for this amount."

Q Isn't the only thing the salesman told you that Rio Rancho was selling comparable land at a particular price?

A I'm sure it was not the only words out of his mouth.

Q Well, did you testify, just testify, that that is what he told you, Rio Rancho was selling comparable land at a particular price?

A Yes. Not to the exclusion of any other statement, but that's what he said.

Q And you assumed from that that, therefore, the land which you owned was also worth that price?

A Yes, that's correct.

Q Am I correct that you and your second wife for a period of time were considering the possibility of living in Albuquerque at Rio Rancho since you were both airline personnel?

A I think you started that, am I correct?

Q Yes.

A No, you are not correct. You are incorrect.

Q Were you and your wife not considering living at Rio Rancho as late as 1973?

A No, that's terribly incorrect; completely erroneous.

Q Your present wife's first name is Diane?

A Yes.

Q And did she tell you in June of this year, June of 1976, she had been visited and interviewed by a man named Paul Mahon, an investigator for some of the defendants in the Rio Rancho case?

A Yes, she mentioned that.

Q Did she discuss her conversation with Mr. Mahon?

A No, none. No.

Q Did you ask her what she had said to Mr. Mahon or what Mr. Mahon had said to her?

A Yes.

Q Was there a discussion of her conversation with Mr. Mahon?

A Very brief. It was not delved into, no. There wasn't time and it wasn't of consequence to us.

Q Did your wife Diane tell Mr. Mahon that --

MR. KAUFMAN: Objection, your Honor, as to what his wife told Mr. Mahon that they did not have a conversation about.

THE COURT: The question is: Did his wife tell the witness.

Q Did your wife Diane tell you that she had told Mr. Mahon that you and she had been considering moving to Rio Rancho as late as 1973?

A No, she didn't tell me that. I never considered doing that.

Q You say that when you saw your property on unit 16, when you visited Rio Rancho, you could not see the developed area of unit 16?

A I believe that's correct.

Q Did you ever receive a map of the Rio Rancho property?

A Road map, do you mean?

Q No, a plotted map to scale, the entire property.

A No, I don't think so.

A plotted map of the entire development to scale, is that the question?

(Continued on next page.)

MR. FLEMING: May I have this marked please.

THE COURT: One is in evidence now.

MR. ARKIN: It is Defendants Exhibit A, I think.

MR. FLEMING: I agree with that.

THE COURT: Do you have it?

Well, use it as though it were the one in evidence.

MR. KAUFMAN: This is the one to scale.

THE COURT: No. He means the one in his hand, Mr. Kaufman. That one is in evidence, or another copy of it is.

MR. KAUFMAN: It is Exhibit 93.

Q I direct your attention to Exhibit 93.

Do you recognize this as Unit 16?

A Yes.

Q Am I correct that Unit 16 is approximately two miles by two miles?

A Are you asking me?

Q Yes.

A I'll have to check the scale.

Q Here is a ruler (handing).

A It appears that way.

Yes, I'd say that's close enough.

Q Okay. That is close enough.

What does the contract say? What lot are we dealing with, do we know?

A (Indicating).

MR. KAUFMAN: What is the exhibit?

MR. ARKIN: Lot 75.

A Right there (indicating).

Q Lot 75, am I correct that Lot 75 is about --

MR. ARKIN: Block 75.

Q -- Block 75, would it be fair to say it's about a mile and a half -- all right.

How far would it be from -- I am trying to get directions.

A Almost two miles, two and a half miles from the road, west of the road.

Q 4,000 feet to two inches, you got about 9,000 feet?

A 9,000 feet.

Q Which should be about --

A Just short of two miles.

Q Well, it would be about a mile and three quarters from the road, is that right; a mile and --

A Yes.

Q About a mile and three quarters from the road, is that right?

A Yes. A little more than that.

Q And the developed property began at the road?

A Yes.

Q And extended a period of distance into Unit 16?

A Right.

Q So you were about a mile and three quarters from the road?

A If you want straight in. Depending from where you went in.

Q Let me ask you, looking at this and measuring to scale on the government's exhibit, does it refresh your recollection as to how far your lot was from the developed area of Unit 16 when you visited your lot?

A What was the beginning of the question?

Doesit refresh my --

Q Does it refresh your recollection as to how far your lot was from the developed area in Unit 16, that is, your lot in Unit 16 from the developed area of Unit 16? Does that refresh your recollection?

A Yes.

Q About how far?

A It looks like a mile and three quarters, somewhere between a mile and a half to two miles, depending on where you are measuring.

Q Well, it is a mile and three quarters to the road, is it not?

A Yes.

Q And the developed area began at the road, did it not?

A Yes. The developed area was here (indicating).

Do you want me to measure from there to there?

About a mile and a half.

Q A mile and a half? That's your estimate?

A Yes.

Q And you cannot recall being able to see it --

A If you went the way the crow flies. If you drove it, it is more than that.

Q I am talking about the way you look.

A Right.

Q And you look the way the crow flies?

A Yes.

Q And it is your testimony you could not see the developed area from your lots?

A I don't remember. I don't think so. The land was not completely flat.

Q Could you see Albuquerque?

A Yes, you could from my lot.

Q How far away was Albuquerque?

A Depending where you are looking to, I suppose between five plus miles. I would think in the neighborhood of five.

Q It was not right next door, was it?

A No.

Q And you bought more land?

A Beg pardon?

Q And you bought more land?

A Yes, I did.

Q When you stopped payments, you had paid approximately $15,000?

A Correct.

Q And you had an additional approximately $5,000 to pay?

A Six.

Q Six. So that the company had in possession $15,000 and an obligation from you of an additional six?

A Correct.

Q And you told them in about August of 1974 -- you stopped payment in about August of 1974.

A Correct.

Q And the company made continued efforts to have you continue payment?

A Correct.

Q They did not forfeit immediately?

A Correct.

Q Even though by forfeiting they would have realized 75 percent of your investment, the company? By forfeiting the company would have acquired 100 percent of your investment, 75 percent of what you would have no right to get it back?

A Correct.

Q They still tried to have you pay the rest of the money and not forfeit?

A Correct.

Q The fact that they did not forfeit until finally in May of 1975 and you received a letter to that effect?

A Correct.

Q I guess it was '76?

A '75.

Q About nine months thereafter?

A Correct.

Q One other question. When you were out on your land, did you find any arrowheads?

A Not that I recall.

THE COURT: Any redirect?

MR. KAUFMAN: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mr. Gray, do you recall Mr. Arkin showing you Defendants Exhibit FM in evidence, which is that notogram from Heinz Realty?

A Yes, sir.

Q Referring you to his total of $29,250, the current value of your land?

A Yes.

Q Do you know where Mr. Heinz got that figure of $29,250?

A I believe he got it from Rio Rancho.

MR. FLEMING: I ask to strike that.

THE COURT: Sustained.

Q Did you have any converstaions with Mr. Heinz about that?

MR. KAUFMAN: Your Honor, we have a Heinz statement --

THE COURT: That doesn't bring in a hearsay conversation.

Q Do you know at what price Rio Rancho was selling its land at that time?

A I don't know the dollar amount exactly, but the amount that Mr. Heinz was quoting to me was the amount that the land was being sold for at the time.

MR. FLEMING: I object and move to strike.

THE COURT: Sustained. Strike the answer. You cannot testify to what somebody told you out in Albuquerque. We don't have him here. That is what we call hearsay.

MR. KAUFMAN: May I have one moment, your Honor.

(Pause)

MR. KAUFMAN: Your Honor, at this time the government would offer Exhibit 794 for identification, which is a May 1974 offering statement for the schedule of prices that appears on page No. 5.

THE COURT: Show it to counsel.

MR. ARKIN: Are you offering the entire statement?

MR. KAUFMAN: Just the schedule of prices on page 5.

MR. ARKIN: If your Honor please, I understand that yesterday there was an agreement among counsel that an Exhibit 795, which is similar to this, would come in and that portions of it which include what Mr. Kaufman is now offering would be read.

I think it is superfluous, cumulative, it is another document in the record which we don't need.

THE COURT: This is a document I gather covering the time period when Mr. Heinz wrote his statement and they are trying to show that the prices which you have set forth in that document was exactly what Mr. Heinz was quoting.

MR. ARKIN: The other document 795 is the same year.

MS. HYNES: Dated December of 1974.

MR. KAUFMAN: This one is May of '74, your Honor.

THE COURT: This is more pertinent than December of '74.

MR. ARKIN: All right.

THE COURT: All right.

(Government Exhibit 794 received in evidence) xx

(Mr. Kaufman read from Defendants Exhibit FM in evidence to the jury)

(Mr. Kaufman read from Government's Exhibit 794 in evidence to the jury)

THE COURT: All right.

MR. KAUFMAN: May this be marked 121-N.

zz (Government Exhibit 121-N marked

for identification)

Q I show you two pages that have been marked 121-N for identification and ask if you can identify those?

A Identify them as being sent to me?

Q Yes.

A Yes.

Q From who?

A Paul Heinz Realty.

MR. KAUFMAN: The government offers 121-N.

MR. ARKIN: No objection.

(Government Exhibit 121-N received in evidence)

Q Mr. Gray, are these documents that you received from Heinz Realty with respect to the listing of your land with him?

A Yes.

MR. KAUFMAN: If I may just read a part of this to the jury, your Honor.

(Mr. Kaufman read from Government Exhibit 121-N in evidence to the jury)

Q Mr. Gray, did you receive that information from Mr. Heinz before or after you received the questionnaire from the government?

A Before I received the questionnaire from the government.

MR. KAUFMAN: No further questions, your Honor.

THE COURT: You may step down. Next witness.

(Witness excused)

MS. HYNES: Your Honor, before I call the next witness I have three documents I would like to read to the jury.

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 560 in evidence to the jury)

MS. HYNES: Government Exhibits 956 and 957 in evidence.

(Ms. Hynes read from Government Exhibits 956 and 957 in evidence to the jury)

MR. KAUFMAN: The government calls Antonio Reyes-Guerra.

ANTONIO REYES-GUERRA, called as a witness by the Government, being first duly sworn, testified as follows:

THE COURT: You may proceed.

MR. KAUFMAN: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. KAUFMAN:

Q Is it Dr. Reyes-Guerra, am I correct?

A Yes, sir.

Q How old are you?

A Fifty-seven.

Q Where do you live?

A In Tuckahoe, New York.

Q Where are you originally from?

A Central America.

Q Where in Central America?

A El Salvador.

Q When did you come to the United States?

A 1945.

Q Are you an American citizen?

A I am.

Q What is your profession?

A I am a dental surgeon.

Q How long have you been a dental surgeon?

A Thirty years.

Q Do you have a family?

A I do.

Q What does your family consist of?

A My wife and two boys.

Q Do you own any land at Rio Rancho Estates?

A I do.

Q How much land?

A I think it is three acres and a commercial -- two commercial lots.

Q Have you paid for all that land in full as yet?

A Not quite.

Q How much have you paid in so far?

A About 75 percent.

Q About how much is that in terms of dollars?

A Ten, $12,000.

Q How much do you still have left to pay?

A About five.

Q How have you made your payments?

A Monthly.

Q By check?

A By check.

Q Do you recall where -- what did you do with the check?

A I mailed it to their place in New York City. I think it is Church Street. It is a mailing address.

Q In New York City ?

A New York City.

Q You mail it to that address?

A Yes, sir.

Q When did you first hear of Rio Rancho Estates?

A 1970, I believe.

Q How did you hear of Rio Rancho?

A A friend contacted me and asked me to attend a dinner in which he advised me to come to because there was a good investment being offered.

Q Did this friend own land at Rio Rancho?

A They did.

Q Has that Friend since moved to Rio Rancho?

A They are living there now.

Q Did you go to that dinner?

A I did.

Q With your friend?

A With my friend.

Q Did you go with your wife as well?

A My wife and his wife.

Q Do you recall where that dinner was?

A Yes, Maxwells, German restaurant outside White Plains.

Q Were films shown at that dinner?

A There were.

Q Were there speeches from the front of the room?

A There were.

Q Was anything said to you at that dinner with respect to resale of your land?

A I can't quite recall how it was said to me, but what was offered was an investment in what was considered a rapidly growing residential and possibly industrial area.

Q Did you buy land at that dinner?

A I believe I did, yes.

Q What was your reason for buying the land?

A Well, there were several reasons. One, it was explained to us that it was a very fine investment, future investment.

They brought out figures and statistics of the rapid growth of New Mexico and toward that direction.

Secondly, that I thought it would be a nice place to have a summer home, to go there and visit and there were skiing facilities. The whole picture was of a very attractive not only for investment, but for living.

Q I show you what has been marked 111-C for identification and ask if you can identify that?

A It is my signature.

Q Is this the contract for the land that you bought that night?

A Yes.

MR. KAUFMAN: The government offers 111-C.

MR. ARKIN: With the other page we have no objection.

(Government Exhibit 111-C received in evidence)

MR. KAUFMAN: If I may just read from part of this, your Honor.

(Mr. Kaufman read from Government Exhibit 111-C in evidence to the jury)

Q Dr. Reyes-Guerra, after you bought the land, did you thereafter go to Albuquerque and Rio Rancho Estates?

A I did.

Q Do you recall when that was?

A I think it was around November.

Q Of 1970?

A I think it was Thanksgiving, yes.

Q Did you go there on a company tour?

A I did.

Q Were you with a number of other people who also had land at Rio Rancho?

A I did.

Q Were you driven around Albuquerque once you were there?

A We were driven around Albuquerque.

Q Did there come a time when you were taken to see your property?

A Yes.

Q How did you get out to your property?

A A salesman took us in his car, you know, just my wife and I.

Q Excuse me?

A He was in charge of showing me where my purchase was.

Q Approximately how long did it take to drive to your property?

A From where, from the real estate office in Rio Rancho or from Albuquerque?

Q No, from the real estate office at Rio Rancho.

A I would say about 20 minutes.

Q What happened when you drove out there?

A I was shown the land. There were markers, there were roads already built. I think the roads even had the names on them.

Q When you say roads, what types of roads?

A Dirt roads, but well graded and wide.

Q What else happened?

A Well, we saw the land and admired the view. That was it.

Q Did you have any conversation with your salesman about the land?

A Oh, yes.

Q What was the conversation?

A Well, the conversation was basically when would it be developed and he stated that, well, at the rate they were selling, with the land all around it, they planned to put in the sweage and the electricity within the next few years.

I asked him the time involved and he said anywhere from three to five years.

Q At that time did you go to see some other land at Rio Rancho?

A That I don't recall.

Q Did you buy additional land when you were out there?

A I bought additional land because he also explained --

Q Did you buy additional land when you were out there?

A I don't recall.

THE COURT: That's Thanksgiving of 1970?

THE WITNESS: Yes, I don't recall whether I bought it then or not.

THE COURT: Do you have the contract?

MR. KAUFMAN: Yes.

Q I show you what has been marked 111-B for identification and ask if that refreshes your recollection if you bought additional land in November of '70.

A Yes, I did.

Q Is this the contract for that additional purchase?

A That's the contract.

THE COURT: That's the time when you were there?

THE WITNESS: Yes, sir.

Q Will you tell us how it came about that you purchased additional land?

A Yes. Well, since this area where I had originally bought the land was going to be developed into a residential area, they were going to put a country club and they were also going to build a business section where there would be stores, professional buildings and possibly -- and schools so they were selling then commercial lots and that's when I bought the commercial lots.

Q What did your salesman say to you about these commercial lots?

A They were going to go up just like they had gone up in Corrales Heights. As soon as they started developing the residential section.

Q You say they were going to go up, what do you mean?

A They were going to build them so as to take care of the people who were buying or building houses in the area in which I bought.

Q Why did you buy this commercial land?

A Because it was -- well, it was an investment.

MR. KAUFMAN: The government offers 111-B.

MR. ARKIN: No objection.

XXX (Government's Exhibit 111-B received in evidence.)

MR. KAUFMAN: If I may read from a portion of this, your Honor?

THE COURT: You may.

(Mr. Kaufman read from Government Exhibit 111-B in evidence to the jury.)

Q Did there come a time when you traveled to Rio Rancho and Albuquerque again?

A I went back the following year.

Q Who did you go with the next year?

A I went with my wife.

Q What did you do out there that next year?

A Well, we visited our friends.

Q These were the friends who had now moved to Rio Rancho?

A They had moved to Rio Rancho and we went to see the plans for the building of the new areas. We visited the real estate office.

Q Did you go to see your property?

A I don't recall whether it was that year or the following year we did. I believe it was the following year.

Q You mean you went again in '72, is that right?

A Yes.

Q Did you see your property on thatoccasion?

A Yes.

Q How did it look in comparison to how it had looked in November of 1970?

A Nothing had changed.

Q Was development any closer to your land?

A No.

Q Did you go out to Albuquerque and Rio Rancho again in April of 1974?

A I did.

Q What happened at that time?

A I went to see my land again to see what was going on and so I tried to contact the salesman that originally sold it to me but he was away. He had a death in the family and so they assigned me another salesman to drive me out there. We were unable to get to the land.

Q Why were you unable to get to your land?

A Because there was flooding of the roads leading to it, so we spent about half an hour trying to get to it through different roads, but every time -- we always came across a flooded area so I was not able to see it.

Q Did you have any conversations with your salesman?

A I did. Then he informed me that -- I asked him, well, when are they going to start building and he said, well, you will have a long period before you see that.

Q Were you referring to the area where you owned the land?

A That's right.

Q What did you do when he told you that?

A Well, I was very upset so I went to see my friend Fitzie.

Q Is he your friend who lived in Rio Rancho?

A That's right. And he said now the salesman now tells me that I will be lucky if my son sees this area built up, which he also told me, and I said so I am stuck with this.

You recommended this investment to me and Rio Rancho told me it was a very, very fine investment and they showed me figures and they gave me a nice talk about what a fine investment it was going to be.

So I went to see the manager at the Rio Rancho real estate place in Rio Rancho. He was very nice about it, but he said to me that they had decided not to build in that area and so the only thing he could do for me was if I exchanged my lots to lots nearer where they were planning to build.

Q Did you ask that man for your money back?

A I did.

Q What did he say?

A No.

Q What type of trade did he offer you?

A Well, I had to pay the difference in the value of the land. The land that he was now trading to me was more valuable in quotes than what I had originally bought.

Q Were you allowed to trade in all the land that you previously had?

A No, I had to leave part of it.

THE COURT: How much was that?

THE WITNESS: I believe it was half an acre, sir.

THE COURT: You mean you were allowed to trade a half acre?

THE WITNESS: No, I was allowed to trade everything except half an acre.

Q You were allowed to trade in five or your six residential lots, is that correct?

A Yes, that's correct.

Q And you had to keep one of your residential lots in unit 24?

A Right.

Q What about your commerciallots in unit 25?

A That I couldn't touch.

Q You couldn't trade that?

A No, sir.

Q Could you get your money back on that?

A No, sir.

Q I show you 111-E for identification and ask if you can identify that.

A Yes.

Q Is this the document reflecting the trade?

A That's it.

MR. KAUFMAN: The government offers 111-E.

MR. ARKIN: Mr. Kaufman, I have the second page.

MR. KAUFMAN: I will take your copy.

MR. ARKIN: Why don't you utilize your copy of the first page and my copy of the second page.

MR. KAUFMAN: Okay.

XXX (Government Exhibit 111-E received in evidence.)

MR. KAUFMAN: May I just read from a portion of it, your Honor?

THE COURT: Yes.

(Mr. Kaufman read from Government Exhibit 111-E in evidence to the jury.)

Q Doctor, am I correct that the additional amount you had to pay was the $5,927 plus the cash down payment of $1,350?

A If that's what he says, that's what it is.

Q Did you see your land that you were getting in unit 13?

A No, I was shown it on a map.

Q Do you know whether or not it had utilities?

A No utilities.

(Continued on next page.)

MR. KAUFMAN: I offer 111-A.

MR. ARKIN: No objection.

XXX (Government's Exhibit No. 111-A received in evidence.)

MR. KAUFMAN: No further questions, your Honor.

THE COURT: You may cross examine.

XXX CROSS EXAMINATION

BY MR. FLEMING:

Q Doctor, you are, did you say, an oral surgeon?

A Yes, sir.

Q That is an orthodontist of some sort?

A No, no. I do dental surgery, surgery in the mouth. Orthodonture straightens teeth.

Q I need the last.

An oral surgeon.

What do you earn a year, approximately?

THE WITNESS: Do I have to answer that?

THE COURT: Yes.

A 50,000.

Q And you own a home in Tuckahoe?

A I do.

Q When did you buy your home in Tuckahoe?

A Well, I just finished paying the mortgage last year, so it's 18 years ago, 18, 19 years ago.

Q What did you pay for it 18 years ago; do you recall?

What was the purchase price, with interest?

A I can't quite remember. It was around 27,000.

Q And have your taxes on that property increased since you purchased it?

A They certainly do and have.

Q Do you have an appraised value of your home and property presently?

A What, for tax purposes?

Q No.

What do you think it is worth? What would you sell it for?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Overruled.

A 75,000.

Q Tuckahoe is in Westchester County?

A Yes, sir.

Q How far is it from New York City?

A 20 miles.

Q I guess it is northwest of New York City? North of New York City?

A I would say so.

Q About 20 miles from New York City.

Has there been substantial development between your home when you purchased it 18 years ago and New York City?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Overruled.

A Could you -- could you explain to me what it is you are asking me? Whether there were new buildings or what?

Q New buildings, new roads, commercial development.

A Between Tuckahoe and New York City?

Q Yes.

A I assume there have.

Q You have seen it, haven't you?

A I really can't tell you. I don't travel that much.

Q Okay.

You were recommended, that is, Rio Rancho or at least attendance at a Rio Rancho sales dinner was recommended to you by a friend of yours?

A That's right.

Q He worked for International Business Machines Corporation?

A That's right.

Q It is called IBM?

A That's right.

Q He was an executive at IBM?

A That's right.

Q And he had himself purchased some Rio Rancho land?

A Yes, sir.

Q Had he gone to a dinner, too?

A I have no idea.

Q You don't know that?

A No.

Q But he invited you to go to a dinner with him?

A That's right.

Q And told you he liked what he had bought?

A That's right.

Q And thought you might be interested in it, too?

A That's right.

Q And you went to that dinner?

A That's right.

Q With a Mrs. Reyes-Guerra?

A That's right.

Q And they showed you a film or a couple of films?

A I don't know whether it was a couple of films.
There was one film and some slides, as I recall.

Q Someone made a speech?

A That's right.

Q You talked to a salesman?

A That's right.

Q You ate your dinner?

A Yes.

Q And you purchased some property?

A That's right.

Q Did anyone force you to purchase that property?

A You mean anybody -- no.

Q And I think you testified thatyou purchased it with a view -- I will withdraw that.

Did you testify that your impression of the evening of the sales dinner was that Rio Rancho was a nice place to live and was also a good investment?

A Yes, sir.

Q Both?

A Both.

Q And you purchased, I believe you testified, because you felt it might be a nice place to have a summer home?

A Yes.

Q You were also interested in the availability of skiing?

A Yes.

Q Do you ski, Doctor?

A No. My sons do.

Q Your son does.

You then went to Rio Rancho?

A I did.

Q By the time you went the first time, had your friend who worked for IBM, had he retired?

A No. He was in the process of retiring.

Q So the first time you went down there, he was not living there?

A If I recall right, they were building a house.

Q TDey were building a house down there?

A They were building a house, yes. They already owned -- I think the house was -- I can't quite be sure.

I think they either had just -- the house was building or they had -- but he had not retired yet.

Q He had not retired, but you think the house was building.

Had you discussed his house with him, the fact that he was moving?

A Oh, yes.

Q And you understood, did you not, that he had exchanged a piece of raw land for land in a developed area which had utilities?

A I'm afraid that I couldn't answer you.

Q You don't recall?

A I don't recall.

Q Do you recall that when you went to the dinner and signed the contract to purchase, you knew then that you were buying raw land without utilities, did you not?

A Oh, yes.

Q And you knew, also, that you had six months to visit the property, take a tour and cancel if you didn't like it?

A I did.

Q And didn't you also know if the time came that you wanted to build a home which you were thinking of and utilities had not reached your lot, you could exchange one half acre of your lot in for an area in the building area?

A Well, it depended when you wanted to build.

If you wanted to build at that time, you couldn't because that other area had not been developed.

MR. FLEMING: Where is the contract?

MR. KAUFMAN: Right there (indicating).

Q This is a copy of the contract you signed on your first purchase (handing)?

A That's right.

Q By the way, this was June 25, 1970.

And you initialed for the receipt of public reports, offering statement and prospectus and so forth?

A Yes, I did.

Q And you received those, did you not?

A I received those after I signed.

Q But you did receive them?

A Yes.

Q I take it you read them?

A That is so many years ago, I don't remember.

Q All right.

Did you read your contract before you signed it?

A I gave it to my lawyer to read.

Q After you signed it?

A I think so.

Q Did you read it the night you signed it?

A Yes.

Q And did you read paragraph 3 of guarantees and conditions of sale?

"If when buyer is ready to build a home utilities have not yet reached his site, seller will exchange a comparable building lot in area already served by utilities for a single lot of buyer."

A That's right.

Q So you understood that you were buying raw land?

A Oh, yes.

Q And you understood that if the time came that you wanted to build and there were no utilities at your lot, you could exchange in for a building lot with utilities?

A Oh, yes, I understood that.

Q Didn't you also understand that your friend, the IBM executive, had done exactly that when he started to build his house?

A No, I'm not sure about that.

I know that he owned -- let me explain to you.

I know he owned several lots.

Q He owned several lots?

A So what he did to get his building I have no idea.

Q You just don't know?

A No.

If he did explain to me, I don't recollect.

Q Okay.

There is no question you knew what the procedure was when you purchased the land?

A I knew the procedure when I purchased the land.

Q There is no question you received the property report?

A I beg your pardon?

Q I am sorry, I shouldn't have done that. I apologize for turning my back.

There is no question that you received the property reports when you purchased the land?

A Yes.

Q You went down to Rio Rancho the first time with your wife, is that right?

A Yes.

Q And they took you around Albuquerque and on the tram and around the developed area of Rio Rancho?

A Yes.

Q And I take it you had a good time?

A I did.

Q Was there anything that you saw when you were at Rio Rancho which changed your mind about possibly moving there and living there as a summer home or as a skiing home?

A You mean whether I decided I didn't want to have a summer home there?

Q Yes.

A No.

Q In other words, what you saw you liked?

A I liked.

Q Yes.

And it was consistent with what you had seen and been told at the dinner?

A That's right.

Q And later -- by the way, have you visited your friend, the IBM executive, at Rio Rancho?

A Yes, the last time, in 1974.

Q He is living there now?

A He is.

Q And am I correct that he is happy there?

A From what I hear.

Q You hear it from him, don't you?

A Yes.

Q Okay.

Then you say you went out to your property which was in unit 24, is that correct?

A Yes.

MR. FLEMING: May I have the large chart, please?

MR. KAUFMAN: Yes (handing).

(Continued on next page.)

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Reyes-Guerra - cross

Q This was in November of 1970?

A Yes, sir.

Q And you knew that Rio Rancho had been under development for a period of years, did you not?

A More or less. How many years I don't know.

Q But you knew it had not just started.

A No.

Q And you were able to see what development there was when you visited in November 1970?

A Right.

Q This is a government's exhibit of Rio Rancho. It is Exhibit 93, doctor.

Can you point out Unit 24?

A No, I couldn't.

Q Why don't you take -- do you recognize this (handing)?

A Yes.

Q Did you sty at the Panorama Inn?

A Yes.

Q That was down here in the Panorama Heights area?

A That's right.

Q And Unit 24 was all the way across the property to here, wasn't it (indicating)?

A That's right. I guess so. If you say so.

Q That chart says Unit 24, does it not?

A That must be it.

Q And it took you about twenty minutes to get there?

A Yeah, approximately.

Q All right.

So is it fair to say that when you got to your lot at Unit 24, you traveled about twenty minutes from the developed area, is that right?

A Yes, approximately.

Q And you were some substantial distance from the developed area?

A That's right.

Q Could you see Albuquerque from Unit 24?

A I can't remember that.

Q Can't remember. All right.

A On a clear day or a muggy day?

Q On a clear day you can see forever.

You say when you saw your lot at Unit 24, it was at that time, out at Rio Rancho, that a salesman told you that utilities would be there in three to five years?

A That's right.

Q That was the first time youhad been told that?

A That's -- well, no, I wouldn't say that.

It's a -- the idea was that they were selling lots --

Q My question is, when you were out at Rio Rancho and told, as you testified, by a salesman as you were at your lot on Unit 24 that utilities would be there in three to five years --

A That's right.

Q -- my question is, am I correct that that was the first time you had been told that?

A No, I can't say that. I can't say that. I can't say that. I cannot agree with that.

Q When were you first told that utilities would be at your lot in three to five years?

A Well, we had a lecture before this in a group.

Q At Rio Rancho?

A At Rio Rancho.

Q Let me reframe my question, then.

Am I correct that the first time you were told that utilities would be at your lot in three to five years was when you visited Rio Rancho?

A That's right.

Q Okay.

And you say you were told that at the sales office and you specifically were told that utilities would be at Lot 24 in three to five years?

A Not me specifically, we were all told this as a gruop that these areas were all going to be developed with utilities between three and five years.

Q So they told you -- you were told at the sales office that the entire project would be developed in three to five years?

A I can't say that, because I don't know where they were purchasing their land. All I know is that our group on what we were saying, this is what we were told.

I don't know where their lots were, you know.

Q Were you told that everyone sitting here owns a lot where there will be utilities within three to five years?

A Well, not specifically like that.

Q It is important to me, doctor, if you can recall.

A I understand it is important to me, but you are asking me something I can't honestly answer you.

All I can tell you we were in a group there and explained to us that the lots we were purchasing would be developed and they would have the utilities between three and five years. That's what they said. Whether it was mine specific or not, that I can't answer.

Q And you are certain when you got out to Lot 24, your salesman at Lot 24 told you that utilities would be there in three to five years?

A That's right.

Q And you purchased more property based upon that?

A That's right, sir.

Q In Unit 25, is that right?

A That's the commercial things? I don't know.

MR. FLEMING: Am I correct Unit 25?

MR. KAUFMAN: Yes.

Q This is Unit 25 up here (indicating).

A That's right.

Q And the developed area was down here at that time, in 1970 (indicating).

A That's right.

Q And you were told, again, that utilities would be in Unit 25 in three to five years?

A That's right.

Q That's your recollection?

A That's my recollection.

Q Just to be clear, you went to Albuquerque in November of 1970, which was five months after you had purchased your land, is that right?

A That's right.

Q Therefore, it was five months after you had received the New York property report or offering statement?

A That's right.

Q I want to read to you from --

MR. FLEMING: Is this in evidence?

Q I want to show you what has been marked BL for identification, a property report -- I will withdraw that -- a property report dated April 17th -- offering statement dated August 17, 1970, and I will ask you if you recall receiving a copy of that (handing).

A Honestly, I couldn't tell you yes or no.

I probably did, but I can't tell you yes or no, because I really don't recall.

MR. FLEMING: I offer it, your Honor.

MR. KAUFMAN: Objection, your Honor.

THE COURT: What is it?

MR. KAUFMAN: The witness says he does not recall receiving it.

THE COURT: He also said he received all the property reports.

That is the basis of the officer; that is the basis on which it comes in.

MR. KAUFMAN: May I have a voir dire, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. KAUFMAN:

Q Doctor, did you retain all property reports and offering statements that you received?

A I doubt it.

Q Did you turn over certain property reports and offering statements to the government?

A If it was -- if it was lega, of it was -- if I had to do it, I did.

MR. KAUFMAN: May these be marked 111-F, G and H.

(Government Exhibits 111-F, G and H, respectively, marked for identification)

Q Dr. Reyes-Guerra, do you recall turning over Exhibits 111-F, G and H to the government pursuant to request (handing)?

A I don't.

Q Did you turn over documents to the government pursuant to government request?

A I don't remember.

MR. KAUFMAN: Your Honor, if the defense will stipulate that Dr. Reyes did turn over documents and the documents are here and these are some of those documents--

THE COURT: What has that got to do with the offer of proof that Mr. Fleming is making?

MR. KAUFMAN: Because these are the offering statements and property reports.

THE COURT: Oh, no. He didn't say he kept them all, he turned them over to you.

A Oh, I'm sorry, I did not understand your question.

You mean did I turn them over to you?

Q Yes.

A Yes, I did. Yes, sir.

You are talking about the government. I am sorry.

THE WITNESS: I forgot he represents the government, your Honor. I apologize.

Q Do you know if you turned over all the property reports or offering statements you have received from Rio

Rancho?

A I did.

Q Do you recall whether or not there were other reports that you received that you threw out before you turned these over?

A That I can't -- I don't recall.

Q Is it possible that you received --

MR. FLEMING: I object.

THE COURT: Sustained.

Q Do you know if these three exhibits, F, G and H, constitute all the property reports and offering statements you received from Rio Rancho?

A As far as I know, that's all in my files.

MR. FLEMING: Objection.

A That's all in my files.

THE COURT: Your objection is overruled.

Q Repeat the answer.

THE COURT: That's all that is in your files, but that isn't in the questions.

A Everything I received was in those files and that's what I turned over to you.

MR. KAUFMAN: I would renew the objection, your Honor.

THE COURT: On that basis, I will sustain it.

CONTINUED CROSS EXAMINATION

XX BY MR. FLEMING:

Q Doctor, 111-C is your purchase agreement for the purchase you made at the dinner in June of 1970?

A Yes.

Q And this paragraph reads, "I/we acknowledge receipt of copies of restrictive covenants, property report filed with the Office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development, any applicable public report, offering statement or prospectus required by state authorities."

Did you initial it there?

A I did.

Q And did your wife initial it there, too?

It's hard to read.

A I can't see. I can see my initials, but I can't see hers.

Q Did you receive an offering statement after you signed the contract?

A After I signed the contract, yes.

Q This offering statement which you have produced is dated June 20, 1973, so I take it that that is not the one you received in June 1970.

A It was so long ago I really can't recall. I'm sorry, but I can't recall. I'm doing to the best of my recollection I did, but I can't tell you. It's possible yes or no.

MR. FLEMING: I offer it again, your Honor.

THE COURT: I will take it.

MR. KAUFMAN: Your Honor, may I have one further question on the voir dire?

THE COURT: No, no.

This witness has given us a complete explanation of the background. Any additional questions aren't going to change his answer. I will let it in.

MR. KAUFMAN: Your Honor, there is one additional question that may.

THE COURT: I will let it in.

(Defendants Chester Carity and Daniel Friedman Exhibit BL received in evidence)

THE COURT: I suggest we recess for lunch.

The jury has asked for a little extra time today, and since they have been punctual and regular in their attendance, the Court will grant it.

2:00 o'clock.

(Luncheon recess)

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AFTERNOON SESSION

2:00 p.m.

(In open court in the absence of the jury.)

THE COURT: Yes?

MR. WEIDNER: Your Honor, I have one brief matter on an exhibit which was discussed yesterday, Exhibit 732.

If I could, I would hand this up to your Honor.

Your Honor ruled that at least part of that exhibit was admissible.

My point now is that thefirst sentence of that exhibit refers to an attached closing statement, which was not, in fact, attached to 732.

I find, however, that the closing statement to which reference is made was premarked by the government as Exhibit 811 for identification.

I suggest that the exhibit as offered is incomplete, and if admitted into evidence it should include as well the offering statement which had been marked as Exhibit 811 for identification.

THE COURT: You mean the closing statement?

MR. WEIDNER: That's right, the closing statement. I misspoke.

THE COURT: Do you have it?

MR. WEIDNER: Yes, I do, your Honor. Let me hand it up (handing).

THE COURT: I mean, does the government have it?

MR. DEVORKIN: We are looking now, your Honor.

MS. HYNES: We did have it yesterday, your Honor.

What is the number?

THE COURT: 811.

(Handing to the court.)

THE COURT: I gather the government has no objection for putting that in for completeness.

MS. HYNES: I have no objection, your Honor.

THE COURT: All right.

Put them together. 811 and 732 will now be known as 732.

MR. WEIDNER: Thank you, your Honor.

THE COURT: Mr. Rubino?

MR. RUBINO: Yes, your Honor.

May I request that defense counsel be given all of the 3500 material now with respect to witnesses that may be called on Tuesday?

Most of us will be away right up until Monday.

THE COURT: I gather there is only one witness being called Tuesday.

MR. KAUFMAN: That's right, your Honor.

We intend to distribute the 3500 material this afternoon.

MR. ARKIN: That is for Governor King?

MR. KAUFMAN: Yes.

THE COURT: How long is Governor King going to take on the direct?

MR. KAUFMAN: About three minutes, your Honor.

THE COURT: Any idea of the cross?

MR. ARKIN: Cross might be somewhat longer than three minutes, your Honor.

THE COURT: How much more than the somewhat more?

I have to schedule.

We will sit from 9:30 to 1:30 on Tuesday. There will be no afternoon session.

MR. ARKIN: I would say that my cross examination of Governor King will take somewhat in the neighborhood of 45 minutes to an hour.

MR. KAUFMAN: Your Honor --

THE COURT: You are going to be way outside the scope of direct examination.

MR. ARKIN: I don't know.

THE COURT: I assume he sh be asked one question with one answer. How you are going to cross examine on one answer for an hour I don't know.

MR. ARKIN: At this particular point, your Honor, I can't say --

THE COURT: I am going to hold you strictly, I am telling you that now. I am not going to waste an hour on a three minute witness.

MR. ARKIN: I don't want to waste any time, either, your Honor.

On the other hand, Governor King is going to be testifying to a particular fact which I think is susceptible to a variety of questions, and I don't want to waste any time, either, I promise you that.

THE COURT: We will see. I am telling you that now.

I thought they were going to ask him one question with one answer. I couldn't figure out how you could cross examine him, but --

MR. RUBINO: I will be very brief. Ten of fifteen minutes at the most.

MR. ARKIN: Your Honor may sustain objections to questions I ask.

THE COURT: I gather that this is merely a question whether he entered into this agreement, isn't it?

MR. KAUFMAN: It is a question of who he negotiated with with respect to the sale of his land at Rio Rancho.

It will be more than one question. It will be five or six questions.

THE COURT: You mean people he talked to?

MR. KAUFMAN: Yes, your HOnor.

THE COURT: He spoke to Oberman, didn't he?

MR. KAUFMAN: That's right.

THE COURT: Anybody else?

MR. KAUFMAN: I believe later on he dealt with Mr. Friend, but I think the purport of his testimony would be with respect to Mr. Oberman.

MR. ARKIN: What I will do is this, your Honor:

After his direct examination I would approach the side bar and I would make an offer of proof as to what I intend to ask him on cross and your Honor can either say yea or nay at that time.

I am not going to stand up here and ask him a lot of questions to which objections may be sustained based on what your Honor just said to me.

I believe I have a legitimate right to cross examine him within a certain scope.

THE COURT: What do you want him in here for, Mr. Rubino, if all they are going to ask him is if he conducted negotiations with Mr. Oberman?

MR. RUBINO: Is it going to be that simple? That was the problem with our stipulation.

THE COURT: What are you going to ask him? Let's have an offer of proof.

MR. KAUFMAN: Your Honor, I am going to ask him if in 1969 he owned real estate in Sandoval County; his answer will be yes.

Approximately how much; the answer will be approximately 140,000 acres.

Did you sell any of it to AMREP or Rio Rancho?

Yes.

With whom did you conduct negotiations?

(Continued on next page.)

THE COURT: That is 811 that just came in, isn't it?

MS. HYNES: Yes.

THE COURT: That's why.

MR. KAUFMAN: With whom did you conduct your negotiations with respect to the sale of this land?

Answer: Herman Oberman.

THE COURT: Then you are going to sit down?

MR. KAUFMAN: And how much did you sell it for?

That is $180 an acre.

THE COURT: That is in the closing statement?

MR. WEIDNER: This closing statement only relates to one small section at the end of the purchase.

The purchase involved four parcels.

THE COURT: All right.

MR. WEIDNER: 811 simply involves the last of that parcels.

MR. KAUFMAN: And the average per acre $180 an acre. That will be it.

THE COURT: That is what he is going to ask him. Do you want to cross examine on it?

MR. RUBINO: This is the difficulty we had with respect to this stipulation. What was being asked for, in effect, would have put Mr. Oberman in a position of having a managerial position. That's what I objected to.

He was, in effect, a messenger boy in respect of the purchase of this land and nothing more.

THE COURT: You have now heard the questions that the government is going to put.

With whom did you negotiate?

He is going to say Mr. Oberman, period.

MR. RUBINO: But there was a conversation there, your Honor, that I should like to bring out so that it will be crystal clear that Mr. Oberman, in effect, was an errand boy in respect of the purchase of this property.

THE COURT: You mean he had no power to negotiate?

MR. RUBINO: He had power to negotiate, but it was well defined.

Wh , in effect, it was is that he was asked to approach the governor and asked if he was willing to sell certain land, the governor said -- he went to him.

The governor said, "Yes, I am."

He went back and he got a price from the man, he conveyed that back to the governor and they said yes.

qtjw 3

It is a little bit different than putting Oberman in a managerial position of having negotiating it.

Ms. Hynes wants to argue that he was one of the principals of this scheme and that he fully negotiated on his own and married it to the Rio Rancho property.

THE COURT: Is that what Governor King says happened?

MR. KAUFMAN: No, your Honor. He negotiated with Mr. Oberman and his understanding of Mr. Oberman was that Mr. Oberman had full authority to enter -- to make decisions with respect to these land transactions.

THE COURT: But that isn't the question. The question is what happened from which the jury will draw the determination whether he had full authority.

Mr. Rubino says if you ask Governor King what happened, he is going to say Mr. Oberman came to him and asked him whether he was willing to sell his land. Governor King said yes.

Mr. Oberman says, "How much do you want?"

Governor King said, "A million dollars."

Mr. Oberman goes back, as far as the governor knows, and he comes back to him and says, "We will pay you a million dollars,"period. That's the end of the negotiation

end t

Is that a fair representation of what happened?

pm

MR. ARKIN: Your Honor, may I respond?

THE COURT: No.

MR. KAUFMAN: Your Honor, it is accurate to the extent that Governor King and Mr. Oberman negotiated the basic terms of the contract.

THE COURT: What do you mean "negotiated the basic terms of the contract"?

MR. KAUFMAN: The amount of land and the price. The contracts were signed by other individuals on behalf of AMREP.

THE COURT: But is it true that all he said to him is, are you willing to sell X acres and the governor said, yes or no?

MR. KAUFMAN: No, it was more than that. The negotiations took place over a period of several months if not a year so it was more than just one or two line conversations.

MR. RUBINO: The principal contract was signed on January 29, 1969.

THE COURT: Yes.

MR. RUBINO: The negotiations thereafter were not had with Mr. Oberman. There is no question that the governor and Mr. Oberman who are friends over a long period of time had conversations, but the principal document which brought about the acquisition of the property was signed in January, on January 29, 1969.

THE COURT: When did the conversation take place, Mr. Kaufman?

MR. KAUFMAN: Your Honor, I didn't hear your question.

THE COURT: He says that thecontract was signed January 29, 1969. When was the first conversation?

MR. KAUFMAN: It was in late '68. Mr. Rubino has seen the relevant portion of Mr. King's grand jury testimony.

THE COURT: I won't tell anybody I promise, tell me.

MR. ARKIN: Except yourself.

MR. KAUFMAN: Governor King testified he had dealings with Mr. Oberman from late 1969 up to 1970. There were four parcels, your Honor.

THE COURT: You say Oberman was in on all four parcels?

MR. KAUFMAN: I am saying that Governor King said he dealt with Mr. Oberman up until about Januar of 1970.

MR. RUBINO: He wasn't even there in January 1970.

THE COURT: Wait a minute, I am not deciding the truth. If the governor is going to say he negotiated with Mr. Oberman unitl 1970, I will not turn to him and say it is untrue because Mr. Rubino tells me it is untrue.

The governor is going to testify he negotiated with your client until January of 1970.

MR. RUBINO: On cross examination, you see, your Honor --

THE COURT: I thought maybe we could get away with it, but we can't.

MR. KAUFMAN: Your Honor --

THE COURT: Produce him. Tuesday morning we will get through with that and we will have as much argument and motions to dismiss as we can get in. I think the first motion should be made by Mr. Arkin. The second motion by Mr. Fleming because if you can get away on Tuesday, you may be able to get away on Tuesday without coming in Wednesday morning.

Then Mr. Weidner, Mr. Hoffinger and Mr. Rubino in that order.

All right.

MS. THOMPSON: The corporation will also argue.

THE COURT: All I know is Mr. Arkin. He

may need some assistance.

MR. ARKIN: I will bring in a cane, I will bring in a sling.

MR. KAUFMAN: I have one other matter with respect to Governor King. We expect to turn over the relevant portion of his grand jury testimony with respect to the subject matter of his direct testimony and that is what we will turn over to the defense.

In the event that the defendants request all his grand jury testimony, we would offer the totality of the grand jury testimony for your Honor to rule on the 3500.

THE COURT: I rule now that if a man testified, his entire grand jury testimony gets turned over unless there is something in it that would be prejudicial to somebody else not in this lawsuit. That is my rule.

MR. KAUFMAN: Even though it doesn't pertain to his direct testimony.

THE COURT: Absolutely, that is my rule.

MR. ARKIN: Your Honor, in the interests of saving some time, I don't want to do it now, but it seems to me that on Tuesday morning whether Governor King or the former Governor King testifies that with your Honor's approval what I will do is approach the side bar and make an offer of proof with respect to my cross examination. Albeit Mr. Kaufman's examination might take three, six or eight minutes or however long it takes him to get those answers out of the witness, the answers to my mind give me the proper scope to ask a variety of other questions which were also in the grand jury regarding his testimony and regarding his ideas and thoughts.

I would ask --

THE COURT: You can make the offer.

MR. ARKIN: That is exactly right.

THE COURT: You can make the offer. I can't stop you from making the offer.

MR. ARKIN: You could, your Honor.

THE COURT: All right, bring the jury back.

Incidentally, I think I will tell the jury they will certainly have next Thursday off and maybe next Wednesday.

MR. ARKIN: As I understand it, your Honor, we are not going forward on Wednesday.

THE COURT: I may not reach you all, all of the defendants on Tuesday.

MR. FLEMING: There will be no testimony.

THE COURT: I don't know what will happen.

I will give myself twenty-four hours leeway. I will tell them they will definitely have Thursday off and they may get Wednesday.

(In open court - jury present)

ANTONIO REYES-GUERRA, resumed.

THE COURT: All right, Mr. Fleming.

CROSS EXAMINATION CONTINUED

BY MR. FLEMING:

Q Doctor, this is Exhibit BL and this is an offering statement Rio Rancho Estates near Albuquerque, New Mexico, dated April 17, 1970.

You recall you purchased your first property on January 25, 19 -- June 25, 1970.

Now, I want to read to you a portion marked No. 5 offering. I want to read this paragraph to you.

"Lots may also be purchased for speculative purposes, but such purchasers are advised that resale for a profit may be difficult for a number of years. In view of the fact that water and utilities may not be available to certain lots for an indefinite number of years."

I want to ask you, did you read that paragraph in or about June of 1970 when you purchased your first property?

A I probably did.

Q You discussed -- you testified you discussed your contract with your lawyer, is that right?

A That's right.

Q You went through it with him?

A Well, I gave it to him and he read it and gave it back to me and said it was all right.

Q I want to read you a portion of your contracts, which is 111-C.

"I/we understand that by signing below I/we are offering to purchase the lots on the conditions set forth and it is agreed that this purchase agreement sets forth the entire agreement between the parties; that no agent or representative of the seller shall have any authority whatsoever to change or modify the agreement in any manner or to make any other agreement or misrepresentation on behalf of the seller and that if Rio Rancho Estates signs a copy hereof this will be a binding contract which may not be modified or amended except by signing by buyer and seller."

Have I read correctly?

A Yes.

Q You showed this contract to your lawyer?

A I sure did.

Q You understood that this contract contained the terms of the agreement between you and Rio Rancho?

A Yes.

Q And there were no other terms of that agreement, is that right?

A I guess so.

Q You read it and you understood that?

A Yes.

Q There is nothing in this contract that says, am I correct, that there will be utilities at Unit 24 or Unit 25 within three to five years?

A No, nothing in that contract.

Q In fact, this contract says, as we have stated before, if when buyer is ready to build a home, utilities have not yet reached his site, seller will exchange a comparable building lot in an area already served by utilities for a single lot of buyer; am I right?

A Right.

Q Isn't the fair inference from that declaration in the contract that there is no assurance as to when utilities will reach any lot?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Overruled.

A No.

Q No assurance.

THE COURT: You can ask him the operation of his mind in redirect examination.

Q There was no assurance?

A You are absolutely right.

Q 111-G is dated May 18, 1970.

Do you remember receiving this when you purchased your land on June 25, 1970?

A If it's in my file, I received it.

MR. FLEMING: I offer it.

MR. KAUFMAN: No objection.

(Defendant Chester Carity and Daniel Friedman Exhibit FQ received in evidence)

Q I want to show you FQ for identification which is a Rio Rancho Estates property report, notice and disclaimer by Office of Interstate Land Sales Registration, United States Department of Housing and Urban Development.

I am reading from the cover page:

"Prospective buyers are notified that unless they have received this property report prior to or at the same time they enter into a contract they may void the contract by notice to the seller."

Have I read correctly?

A Yes.

Q And it continues:

"Unless a buyer acknowledges in writing that he has read the report and personally inspected the lot prior to signing his contract, he may revoke his contract within forty-eight hours from the signing of his contract if he has received the property report less than forty-eight hours prior to the signing of such contract."

Have I read correctly?

A Right.

Q You gave your contract to your lawyer to review?

A That is right.

Q You did not revoke it?

A I did not.

Q Am I correct that Paragraph 10 with regard to electricity it states: "Electricity is furnished by the Public Service Company of New Mexico in portions of the residential areas in Units 11 and 16. The utility company has indicated that it will expand itself facilities to serve additional lots as an when houses are constructed thereon subject to its service extension policies. However, there are no legal assurances that the utility company will so expand its facilities.

Have I read correctly?

A You have read correctly.

Q When you went out to Rio Rancho and you bought more land, commercial land on November 20, 1970, you signed Exhibit No. 111-B, am I correct?

A Yes.

Q Am I correct that that contract for the purchase of the commercial property contains exactly the same paragraph which says verbatim that everything that you are agreeing to is contained in the contract?

A I agree.

Q And that it may not be modified by any representative of the company. Shall I read it all?

A No.

Q It says the same thing and you read that at that time, am I correct?

A Right. I think so, yes.

Q Now, you also signed --

MR. FLEMING: May I have this marked, please.

(Defendant Chester Carity and Daniel Friedman Exhibit FR marked for identification)

Q When you made your visit to Rio Rancho you also signed a record of property visitation, am I correct? Let me show you FR?

A If I signed it, I signed it.

Q Let me show you FR --

THE COURT: Did you sign it?

THE WITNESS: My signature is here, your Honor.

Q Do you recognize that?

A I don't recall, but this is my signature.

THE COURT: You are the only one that can tell us?

A Yes, that is my signature.

MR. FLEMING: I offer that.

MR. KAUFMAN: No objection.

XXX (Defendants Chester Carity and Daniel Friedman Exhibit FR received in evidence.)

Q This is captioned Rio Rancho Estates record of property visitation, November 20, 1970 and your name and your address, is that correct?

A Right.

Q It says I have inspected my property and am satisfied with the home site I have purchased and your signature appears thereunder?

A Yes.

Q Now, there is also a portion down here with a printed caption "purchaser's comments," is that correct?

A Yes.

Q You were the purchaser?

A Yes.

Q That's blank?

A Yes.

Q You did not write in purchaser's comment, subject to a representation that utilities will reach my property in three to five years?

A No, I did not.

Q I take it you had your lawyer review that contract, too?

A I don't think I had a good lawyer.

Q Well, that's not unusual.

Now, did you testify that the salesman out there in 1970 said that there would be a country club?

A Well, those were the plans for the future.

Q My question is, Doctor, did you testify this morning that one of the things the salesman had told you is that there would be a country club?

A Yes, I did.

Q When you went back in 1974, in fact, there was a country club, was there not?

A No, sir, he wasn't referring to that one.

Q I am sorry?

A He was not referring to the one that was already there.

Q There was one there in 1970?

A There was one that was building there in 1970.

Q They were building on in 1970 and he said there would be another one?

A That's right.

Q He also said there would be a shopping center, did he not?

A That's right.

Q When you went back in 1974, there was a shopping center, was there not?

A No, sir, not in the area where he mentioned.

Q You said it was going to be in another area?

A That's right.

Q There is no question that there was a -- without regard to the area, when you got back in '74, there was a country club, there was a shopping center?

A That was already there in '70.

Q The shopping center was there in '70?

A It was being built then. Part of it was already in operation.

Q And you also said there would be a school?

A That's right.

Q Was the school there in 1970?

A Not in the area where he proposed.

Q He said all of these would be up where your property was?

A That's right.

Q You did not put that on your visitation record either, did you?

A No, I did not. I am learning, though.

Q How much have you learned in the stock market?

A I don't play the stock market.

Q Have you not invested in the stock market?

A Well, I have invested.

Q Have you not bought stock in the stock market over the past ten years?

A I have. I don't consider that playing in the stock market, investment.

Q Have you invested in the stock market over the last ten years?

A I have.

Q Is it a fair statement to say that you have picked all the wrong stocks?

A No, it's not.

Q Have you made or lost money in the stock market?

A I would say I have come out even.

Q You have come out even?

A Yes, maybe I have made about 3 per cent.

Q Now, were you interviewed by a Paul Mahon?

A A what?

Q Were you interviewed this August at your office by two men, an Albert Villafani and a Paul Mahon?

A I was.

Q Had they previously -- had they interviewed your wife the day before?

A They didn't interview her. They asked to speak to her and she referred them to me

Q Did your wife come down here with you today?

A No.

Q Is it your testimony that your wife did not speak to Mr. Villafani and Mr. Mahon?

A She spoke to them, but they didn't interview her.

Q Did you speak to your wife about her conversation with Mr. Mahon and Mr. Villafani?

A I did.

Q Did she tell you that she had told Mr. Mahon and Mr. Villafani that you and she had bought all the wrong stocks and had lost money in the market?

MR. KAUFMAN: Objection, your Honor.

A No, she didn't. No, not that I know of.

THE COURT: Overruled.

Q You spoke to Mr. Mahon, isn't that right?

A Well, there were two of them. I spoke to both of them in my office.

Q Do you recall talking to them about the stock market?

A I probably did. I can't say -- I couldn't tell you yes or no.

Q Do you recall telling them the stock market is a real gamble, you buy your stock and you win or you lose and that's it?

A That's right.

Q Is it your present testimony that you have made about 3 per cent over the past ten years?

A I would say so.

MR. FLEMING: I have nothing further, your Honor.

THE COURT: Mr. Arkin.

CROSS EXAMINATION

BY MR. ARKIN:

Q Doctor Reyes-Guerra, you say you have a friend who now lives in Rio Rancho?

A Yes, I do.

Q What's his name?

A Fitzie, Hans Fitzie.

Q He used to work for IBM?

A Yes.

Q In what capacity?

A He was an executive, world trade, I believe.

Q Excuse me?

A World trade, I believe.

Q The world trade executive. He is retired from there now?

A Yes.

Q Do you know anything about his education?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Sustained.

MR. ARKIN: May I make an offer of proof at the side bar?

THE COURT: No.

Q Would you say thatyour friend is a pretty sophisticated fellow?

MR. KAUFMAN: Objection.

THE COURT: Sustained.

Q Would you say he is a smart fellow?

MR. KAUFMAN: Objection.

THE COURT: Sustained.

Q When you went out to Albuquerque in 1970, about five months after you bought your property, isn't that right?

A Yes.

Q You went on a company tour?

A Yes.

Q And you knew at the time thatyou went that you had a right to cancel if you didn't like what you saw, is that right?

A Yes.

Q You had a contractual right to cancel?

A Yes.

Q Before you went out there you showed you contract to your lawyer, isn't that so?

A I assume so.

Q That's Mr. Russo?

A Yes.

Q R-u-s-s-o?

A Yes.

Q From Tuckahoe, New York?

A Yes.

Q He has been your lawyer for six or seven years?

A Yes.

Q You didn't think he was such a bad lawyer at that time, did you?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Sustained.

Q You entered into another contract later on, that is in November. You showed that contract to your lawyer, too, didn't you?

A I did.

Q Later on in 1974, you entered into an arrangment or a contract rather with Rio Rancho, didn't you?

A I did.

Q Before that contract was consummated, you had your lawyer review it?

A I did.

Q It was your lawyer who forwarded that contract to the company, didn't he?

A I assume so.

Q After you signed it?

A Probably.

Q And after he reviewed it?

A Probably.

Q Together with your check?

A Probably.

Q Probably or certainly?

A I don't recall. I might have sent the check before he checked it.

MR. ARKIN: Mark this.

XXXX (Defendants Howard Friedma[illegible] and Henry Hoffman Exhibit FS marked for identification.)

Q Don't read this out loud, read it to yourself and see if it refreshes your recollection.

(Pause.)

A Yes.

Q Does that refresh your recollection, Doctor, that your lawyer, Mr. Russo from Tuckahoe, sent the check to the company after he reviewed the contract?

A That's true.

Q That's certainly true, isn't it.

You testified on direct examination that you were told that property values or your property would go up in value, isn't that right?

A I was, yes.

Q You were also told a similar thing -- strike that.

I take it having bought stock over the years you have been told by various stock brokers that this stock or that stock was going to go up, isn't that so?

A Not necessarily.

Q They told you it was a good thing to put your money in?

A Not necessarily.

Q They told you it was a bad thing?

A No, they didn't say anything to me. I picked it.

Q You picked it?

A Yes.

Q Your stock brokers never gave you any advice?

A Yes, sometimes they told me not to buy it and sometimes they told me to buy it.

Q When they told you to buy it, did they say it would go up?

A Of course, if I am going to buy it, the implication is that it was going to go up.

Q They didn't say it was a good thing and it's going to go up?

A Mostly non-committal. The only time they told me not to buy --

Q I am talking about theones they told you to buy, not the ones they didn't tell you to buy.

A I will have to answer you this way. I have over the past few years until they finally stopped giving me advice been receiving calls from the stock broker that we have got some stock that we think you should buy. I haven't bought it. That's it.

Q You did buy stocks though, didn't you?

A I have bought some, yes.

Q Have you ever bought a stock on the recommendation of a stock broker every in your whole life?

A I must have, certainly.

Q When you bought it on the recommendation of your stock broker, didn't he say it's going to go up?

A I don't think they ever were that positive. They would say, we think it's going to go up.

Q Every time somebody says to you, it's going to go up, don't you understand that to be that person saying I think or we think it is going to go up?

A I agree with you.

Q It's a prediction, isn't it?

A That's right.

Q Nobody can tell the future, you understand that?

A I agree with you.

Q So when people told you your land was going to go up, that was a prediction, you understood that, isn't that so?

A More or less, yes.

MR. ARKIN: I have no other questions.

XXX MR. KAUFMAN: Very briefly, your Honor.

REDIRECT EXAMINATION

BY MR. KAUFMAN:

Q When you went to those dinners, were comparisons made between investment in Rio Rancho and investments in the stock market?

A Yes.

Q What were you told about that?

A Well, they were telling how it was much safer, much more probable, that they were a better investment than stock. They compared the land values as they had risen over the last few years to the stock market.

Q Which came out better?

A The land values.

Q What was said to you about your investment in Rio Rancho, were you told that it was a speculative investment or that it was a safe and secure investment?

A Can I answer that my way?

Q Sure.

A They said by comparison with the stock market and all the values of any investments that we have now, Rio Rancho was the best.

MR. KAUFMAN: No further questions, your Honor.

THE COURT: You may step down.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: Are you going to read exhibits?

MS. HYNES: Yes, your Honor.

At this time, the government will read part of Exhibit 612 in evidence, your Honor.

(Ms. Hynes read from Government Exhibit 612 in evidence to the jury.)

MS. HYNES: Government Exhibit 806 in evidence are the minutes of the special meeting of the board of directors of the American Realty and Petroleum Corporation on August 10, 1971.

(Ms. Hynes read from Government Exhibit 806 in evidence to the jury..

MR. RUBINO: Excuse me, please, your Honor, I hate to interrupt, but I believe that Ms. Hynes misspoke. She said 1971. I think she means '61.

MS. HYNES: Did I say '71?

THE COURT: Mr. Rubino said you said '71.

MS. HYNES: The minutes are for 1961. If I misspoke, it is the 1961 meeting.

THE COURT: This is Exhibit 806?

MS. HYNES: Exhibit 806.

(Ms. Hynes continued reading from Government Exhibit 806 in evidence to the jury.)

MS. HYNES: Government Exhibit 613 in evidence is an assignment of contract.

(Ms. Hynes read from Government Exhibit 613 in evidence to the jury.)

MS. HYNES: Government Exhibit 604 in evidence is a memorandum, dated November 13, 1968. It is to John Sommerholder, Edward B. Winslow, Jeffrey Simon, Howard Friedman, Hank Hoffman and Herman Oberman. It is from Chester Carity.

(Ms. Hynes read from Government Exhibit 604 in evidence to the jury.

THE COURT: What was that number?

MS. HYNES: The number, your Honor, is 604.

Government Exhibit 410-A in evidence is a certified copy from the Securities and Exchange Commission of a letter, dated October 18, 1968, from Herman B. Oberman, addressed to the Securities and Exchange Commission.

(Ms. Hynes read from Government Exhibit 410-A in evidence to the jury.)

MS. HYNES: The registration statement referred to in Government Exhibit 410-A has previously been introduced in evidence as Government Exhibit 410.

(Ms. Hynes read from Government Exhibit 410 in evidence to the jury.)

MS. HYNES: Government Exhibit 732. Government Exhibit 732 is a memorandum, dated January 27, 1971. It is to Howard W. Friedman, Chester Carity and Dan Friedman Re: Report on Trip to Rio.

At thebottom of the second page are the initials "SHF."

(Ms. Hynes read from Government Exhibit 732 in evidence to the jury.)

MS. HYNES: Government Exhibit 872 in evidence is a memorandum to the files from Marianne Newman Re: John and Priscilla Capp, dated November 17, 1971.

(Ms. Hynes read from Government Exhibit 872 in evidence to the jury.)

MS. HYNES: Government Exhibit 813 in evidence. This is a memorandum to Howard Friedman and Chester Carity, among others, and it is from Solomon H. Friend.

(Ms. Hynes read from Government Exhibit 813 in evidence to the jury.)

MS. HYNES: Government Exhibit 218-I is an annual report of AMREP. It is 1965-1966. It is a report that covers 22 pages and on pages 4 and 5 there is a "message to shareholders and the financial community" and on page 6 the message is signed "American Realty and Petroleum Corporation, Irving W. Blum, president."

(Ms. Hynes read from Government Exhibit 218-I in evidence to the jury.)

(Continued on next page.)

MS. HYNES: It has been stipulated by counsel for AMREP Corporation that the annual report which I have just read from was sent out to stockholders.

(Ms. Hynes read from Government's Exhibit 629 in evidence to the jury.)

(Ms. Hynes read from Government's Exhibit 531 in evidence to the jury.)

(Ms. Hynes read from Government's Exhibit 586 in evidence to the jury.)

(Ms. Hynes read from Government's Exhibit 433 in evidence to the jury.)

(Ms. Hynes read from Government's Exhibit 430 in evidence to the jury.)

(Ms. Hynes read from Government's Exhibit 489 in evidence to the jury.)

(Ms. Hynes read from Government's Exhibit 963 in evidence to the jury.)

MS. HYNES: Your Honor, can we approach the side bar, please?

THE COURT: You may.

(At the side bar.)

MS. HYNES: Your Honor, I just wanted to inquire whether your Honor is prepared to rule on the board of directors minutes.

gtjb

THE COURT: No. I have problems with it.

I read the cases again and I decided that I better go over the minutes a second time and I haven't had a chance to do it.

It will be done over the recess and you can do it the first thing Tuesday morning. It won't interfere with your presentation now.

MS. HYNES: Okay.

Your Honor, my next --

MR. ARKIN: Is that with respect to Mr. Friend's testimony?

THE COURT: This is on the minutes. They want to put minutes in on the claim that this shows knowledge on the part of the people who were present as to what was going on.

MS. HYNES: Your Honor, the next thing I would do is to read Mr. Friend's grand jury testimony.

Is this a good time for a recess and then I will read that? It will only take --

THE COURT: Does this finish your reading?

MS. HYNES: This will finish my reading.

THE COURT: The only thing we have on Tuesday are the portions of the minutes, if any, I say are admissible, plus the live witness, is that correct?

MS. HYNES: We will --

MR. ARKIN: Your Honor is goingto adjourn at 1:30 on Tuesday?

THE COURT: We will start at 9:30.

MR. ARKIN: Start at 9:30 and adjourn at 1:30.

MS. HYNES: Your Honor, the government's preference would be to read the grand jury testimony after your Honor has ruled on the board of directors minutes.

THE COURT: No. You are going to do it now. I want everything done today except the minutes, and if you press me I will throw them out.

MS. HYNES: No, your Honor. That is fine.

Can we take a recess so I can just rest my voice?

THE COURT: Yes, sur.

(In open court.)

THE COURT: You can have a recess.

(Recess.)

(In open court in the absence of the jury.)

THE COURT: Yes?

MR. RUBINO: May we approach the side bar?

THE COURT: Yes.

(At the side bar.)

MR. RUBINO: Your Honor, Ms. Hynes and I were working on a stipulation which might satisfy both parties.

I am advised, however, that Mr. Arkin should like --

MR. ARKIN: I cannot hear you.

MR. RUBINO: I am reporting to his Honor, that it appears that Ms. Hynes and I probably, before the end of the day and before the jury is discharged, subject to his Honor's feeling about it, that we will probably arrive at a stipulation satisfactory to both sides in respect to the governor.

I am advised, however, that Mr. Arkin has a position that he should like to state to the court with respect to the stipulation.

MR. ARKIN: The stipulation, your Honor, would affect everybody else in the case, because it speaks of negotiations on this property as an agent for somebody else.

The very concept in the process of negotiations in my mind opens up areas where we should cross examine a live witness on.

For example, the negotiations with Bruce King, later Governor King and now just plain Bruce King again, had releases on property rights, also there were negotiations with respect to easements, all of which I would inquire into, because they show --

THE COURT: They are not being offered for that.

MR. ARKIN: They are offering the stipulation, if your Honor please --

THE COURT: If they put King on the stand, he is not going to testify as to that.

MR. ARKIN: He is going to testify he negotiated.

THE COURT: He is going to say that he spoke to this man once or twice and signed the contract and goes home.

MS. HYNES: And you have a closing statement in evidence, your Honor, that has very detailed statements on what was involved in leases and releases.

THE COURT: They don't have to produce anybody. This is being offered against Oberman.

MR. ARKIN: I understand the government doesn't have to produce anybody, your Honor --

THE COURT: I know you would like to have him, but they don't have to produce him, so you can get your in. You can produce him on your case.

MR. ARKIN: I understand that, your Honor. I am well aware I can call him, but the problem here is that when you have a stipulation which says -- I take it the words are going to be Mr. Oberman as agent for others --

MR. RUBINO: Yes, it is fair to tell you that that is what we have tentatively arrived at.

(Continued on next page.)

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THE COURT: That puts a different light on it, because you are getting in that Oberman was agent for them and they are not going to agree to it. They want to cross examine this man who is going to say that he is an agent for them.

MS. HYNES: I think we can resolve this by saying Mr. Oberman participated in negotiations for the acquisition for an additional 31,000 acres of land at an average price of $180 an acre, these negotiations resulted in contracts that were entered into, the government will offer the contract and the contract will speak for itself.

THE COURT: What is your objection to that?

MR. ARKIN: That the concept, again, the process of negotiation coming out in a stipulation as it does, which obviously has an impact upon everybody in the case --

THE COURT: The company bought it, didn't they?

MR. ARKIN: There is no question the company bought it, but they bought it under certain terms and conditions.

MS. HYNES: Which are set forth in the contract and we will offer the contract.

MR. ARKIN: It is not entirely true. There

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are other factos in terms of these negotiations which are very important to everybody in this case.

I agree, your Honor, I can call him on my case, but --

THE COURT: I overrule the objection.

If they have the contract and all they are saying is that Mr. Oberman negotiated this contract and here is the contract, you have no objection. There is the contract.

What were you going to do, attack the contract collaterally by saying this is really not a contract?

MR. ARKIN: This is not a contract case, I know that, your Honor.

MR. FLEMING: Yes, it is a case about contracts.

MR. ARKIN: Maybe that is what it should be.

THE COURT: I am walking away from that.

MR. ARKIN: Sustained.

THE COURT: I would like to get the jury out of here. They are sitting in there doing nothing. Let's get the reading of the rest of the documents and you work out with Ms. Hynes what you want to do. I don't want to keep the jury here as I did yesterday afternoon for two and a half hours doing nothing.

MR. ARKIN: Your Honor, my objection is overruled, then?

THE COURT: Yes, on the basis of what has been laterally said to me.

MR. ARKIN: My frontal objection has been overruled. I understand it, your Honor.

THE COURT: All right.

(In open court - jury present)

THE COURT: All right.

MS. HYNES: Your Honor, at this time the government will read from the grand jury testimony of Solomon H. Friend.

We have marked the portions of the grand jury testimony as Government Exhibit 201.

MR. ARKIN: Your Honor, there are certain instructions with respect to that.

THE COURT: Yes, that is true.

You are going to hear excerpts of testimony that Mr. Friend gave before the grand jury.

In the first place, none of this testimony is admissible against any of the three corporations. In other words, whatever is said is not binding on those corporations and can never be considered by you in the

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ultimate decision as to the three corporations.

Is that clear?

In addition, there are some portions that are admissible in consideration of Mr. Friend's involvement and nobody else's, and we will tell you, as Ms. Hynes reads toyou, which portions those are.

But none of it can be considered by you in connection with the corporations.

All right.

MR. ARKIN: What about the individuals, your Honor?

THE COURT: Well, some goes to individuals, some does not.

Come up to the side bar.

(At the side bar)

THE COURT: I made it perfectly clear on the record what the ruling was.

Page 14, page 19, page 20, to the extent they may be an involvement of the other individuals come in against them.

The portions only as to Friend are page 49, page 52 on July 4th; all the portions on September 4th. And I am not going over it again.

Some comes in against all of them, because the Court of Appeals says there was no Bruton problem.

MR. DEVORKIN: I think the government and defendants may agree on something.

MR. KAUFMAN: When the Court of Appeals said there was no Bruton problem, I think they said the testimony may come in against the Defendant Friend, but any potential Bruton problem that may appear is not sufficient to prevent the admission of the testimony against Frierd --

MR. FLEMING: Can be cured by a limiting instruction.

MR. KAUFMAN: But that does not mean that it is admissible against the other individuals.

THE COURT: In other words, what you are reading now is admissible only against Friend and nobody else?

MR. KAUFMAN: That's correct, your Honor.

We argued that it was admissible against the corporation.

Your Honor has obviously ruled that it is not against the corporation.

So given your Honor's ruling with respect to that, then the final conclusion is that it is only admissible against Friend, the totality of the testimony.

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MR. FLEMING: I think that's right, Judge. It is an out of court declaration not subject to cross examination.

The Bruton question is whether it has to be excluded because a limiting instruction cannot cure it.

What the Court of Appeals is simply saying with regard to certain areas a limiting instruction to the effect that Mr. Kaufman has articulated is sufficient.

We, of course, disagree on that.

THE COURT: My rulings are incorrect. All of you sat there and let me make them.

MR. FLEMING: Judge, I am telling you, I agree with that one, but I guess, you know --

MR. KAUFMAN: I thought you were ruling the portions you were not specifying as to Friend were also admissible against the corporation.

THE COURT: No.

MR. KAUFMAN: I guess we misunderstood that.

THE COURT: Nothing comes in against the corporation. That is the one thing I am sure of.

MR. FLEMING: I have to be more candid, Judge, I was not paying very much attention.

I think Mr. Kaufman is right that nothing can be admissible against anybody else but Mr. Friend.

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(In open court.)

THE COURT: Ladies and gentlemen of the jury, I am goingto correct what I said before. None of what you are going to hear can be considered by you against any other defendant in this case except in consideration of Mr. Friend's involvement.

All right.

MS. HYNES: Thank you, your Honor.

The following testimony was given by Mr. Friend on July 24, 1975, page 14, line 6:

"Q Have you had responsibilities in connection with reviewing advertising?

"A Yes, I have.

"Q Now what period of time are we talking about?

"A From the time I was attorney right up to the present time.

"Q And those responsibilities included reviewing advertising and promotional material for Rio Rancho Estates?

"A Well, I wouldn't always review -- yes, but I wouldn't review it directly all the time.

"I had six lawyers working under me who worked with me on it.

"Q When you first joined AMREP in August of '69 eojb

as an employee and on a retainer, did you have any involvement with reviewing advertising?

"A Not really."

Page 19, line 11:

"Q Okay. That answers the question. Let me just ask you -- I am going to put in front of you a document that has previously been marked Exhibit 341 (handing).

"It is a script for a film, "Your Golden Future" and it has, among other notations on the first page it has reviewed March 7, '72, and then it has the initials SHF.

"Those initials, I take it, stand for Solomon H. Friend?

"A (Perusing document) I wrote it. My handwriting.

"Q Did you review this script?

"A Yes, I did.

"And with Van, who was the then head of the advertising department and Lynn Kimmel.

"Q And can you tell by looking at the copy about whether those were your markings on that script?

"A Looks like, I'd say almost all of it is my marking. Yes, ma'am.

"Yes, I did this."

Page 32, line 14:

"Q I am going to show you a pamphlet that has previously been marked Exhibit 389 entitled "This is My Land" (handing).

"Have you seen that pamphlet before, Mr. Friend?

"A (Witness perusing document) Yes.

"Q When for the first time did you see that pamphlet?

"A I believe it was in 1972.

"Q And did you read it in 1972?

"A Not entire pamphlet.

"I read one part of it, page 8 and 9.

"Q And what was the reason for reading page 8 and 9?

"A Somebody in the advertising department brought the previous version to me, page 8 and 9 and told me that the lawyers in the legal department felt that it had to be changed at my request and they weren't sure just how to change it. They have drafted something, wanted my legal opinion as to whether I thought it was valid.

"Q Are you saying that you had given an instruction with respect to an earlier version of that pamphlet to have it revised?

"A It was in connection with my instruction to review the reference in that memo.

"I asked the legal department to review the literature."

Page 48, line 19:

"Q Did you at any time review scripts for dinner parties at Rio Rancho?

"A I did not review a script for Rio Rancho with anybody.

"But I did discuss with Mr. Pete Miller what I thought his oral presentation had to contain and what they could not contain.

"I made it absolutely clear.

"Q What couldn't they contain?

"A They could not contain any reference directly or indirectly to any monetary rewards from the purchase of the land.

"Q What is a monetary reward, profit?

"A That is a person could get rich quick, that they could resell his land readily, that it was a liquid investment.

"Q Why didn't you want any statement about the purchaser could resell his land readily, because he couldn't resell his land readily?

"A Yes.

"Q He couldn't?

"A Yes.

"Q How do you know that?

"A I know that a person purchasing theland and trying to resell would be in competition with the very same company who sold it to him.

"At some point in the future he might be able to resell, but there generally was no resale market. I know that."

Page 52:

"Q You have been there now five years, Mr. Friend, and you have learned in those five years that there was no resale market for that land, correct?

"A There is no resale market now. There will not be in the immediate foreseeable future until the property is all sold out.

"I believe that to be true."

The testimony of September 11, 1975, page 77, line 10:

"Q If someone purchased for investment, looking toward reselling it at a profit, is the land worth more today?

"A There is no resale market of any consequence. If you measure the value of land by whether the customer can resell it, I would agree with you 100 per cent that in the absence of a resale market at the present time, then he owns a piece of land which may be worth more theoretically, but he cannot get more because he cannot sell it."

Page 82, line 10:

"Q There is no resale market, I believe we are in agreement on that?

"A Yes."

Page 83:

"Q What is a long term investment?

"A Ten, fifteen years.

"Q The company has been selling land since 1961. For those people who bought it in 1961, '62, '63, we are now in 1975, you defined long term as ten years, for them their long term investment is up and there is no resale market?

"A Right."

Testimony on July 31, 1975, page 10, line 21:

"Q How far is unit 7 from unit 11?

"A Unit 7 is the same distance from unit 11 as unit 11 is from unit 16.

"Q Which is what?

"A Approximately four miles as I remember it, about four miles.

"Q The approach to unit 11, is that all paved; also from unit 16 to unit 11, is that four miles of paved roads?

"A No, ma'am, not all of it.

"In other words, the main artery road is a wide road, but it is not all paved, and it is not all dirt. The portion that is not paved is not a dusty road, it is a road which the county calls caliche. I learned these things as I got to represent the company. Caliche is a rock-base substance which is typical of all the roads used in that county. That is a basic county road.

"Q What is the distance of unpaved roads between unit 16 and unit 11?

"A The main road?

"Q How much of that road is unpaved between unit 16 and unit 11?

"A I would say half.

"Q Two miles?

"A That is a guess, I would say two miles.

"Q From unit 11 to unit 7?

"A None of it is paved.

"Q None of it is paved?

"A Right.

"The reason for that is, there is only two families living in unit 7."

Testimony on September 9, 1975, line 15, page 2:

"Q Mr. Friend, at your last appearance before the grand jury you were asked to ascertain certain information on the building at Rio Rancho, how many homes had been built in given years, how many homes had been sold, how many homes had been sold to home site owners as a result of an exchange, et cetera?

"Do you have that information?

"A Yes, I do. The first question was how many single family homes were completed each year for the last seven fiscal years, or beyond that if the information was available. The number of single family homes starting with 1975 and working backwards --

"Q Let's get the dates, are you saying between April 30, '74 and April 30, '75?

"A Fiscal '75, yes. I have it on a fiscal basis. And I want to say that this information -- I don't have personal knowledge of this data. It was given to me by the computer people and other people who would have the information. And I have no reason to believe that it is not accurate. I believe it is accurate.

"Q And this information is based upon business records of the company?

"A Yes, yes.

"Q Okay. For fiscal year ending April 30, 1975, how many single family homes were built at Rio Rancho?

"A 110.

"Q And how many were sold during that fiscal year?

"A 117.

"Q For the fiscal year ending April 30, 1974, how many single family homes were built?

"A 188 were built. 202 were sold.

"Q For the fiscal year ending April 30, '73, how many single family homes were built?

"A 248 were built. 244 were sold.

"Now for 1972, all of this is on a fiscal year as Ms. Hynes indicated, 184 were built. 155 were sold.

"1971, 235 were built; 243 were sold.

"1970, 178 were built; 170 were sold.

"1969, 105 were built; 100 were sold.

"Prior to 1969, as a total, and not by any fiscal year, 268 were built and 263 were sold.

"The total number of houses built from inception, that is single family houses, was 1,516. The total number of single family houses that were sold were 1,494. The difference is about 20 houses which probably is the houses that are in inventory which haven't been sold."

The testimony of September 4, 1975, in the morning, page 63, line 23:

"Q Is it your honest belief that Rio Rancho, the entire subdivision of 91,000 acres, would become fully developed?

"A Not in my lifetime.

"Q What is your honest opinion about when it would become fully developed, if ever?

"A I think, to be very accurate, in the first place, Rio Rancho is 91,000 acres, but all of it is not subdivided for home sites.

"Q In any event, let me have an answer to the question.

"Why don't we have the question read back?

"A I remember the question. The question, I believe, is when -- what is my honest belief as to when I think the entire subdivision, whatever its arithmetic might be, will be ultimately developed, right?

"I think it would be folly to suggest that the entire subdivision will be developed in my lifetime.

"Q You have told us that.

"When do you think it will be developed?

"A Based upon the rate of growth that occurred in the past and based upon a reasonable rate of growth in the future, I would say that in 10 to 15 years, Rio Rancho will have 50,000 people.

"Q In 10 to 15 years?

A Yes, will have a total of 50,000 people.

"Now, how many lots will be built upon to accommodate the 50,000 people really depends upon the sizes of the lots that they built upon and whether they buy condominiums or the nature of the development at that time.

"I really cannot tell you because I'd be speculating and guessing and I'd be playing the role of a clairvoyant, and I'm not. There's no question that it will be many, many, many years beyond my lifetime and probably yours, Ms. Hynes.

"Q How many years are you talking about beyond your lifetime?

"A I would say about the year -- we're in 1975 -- I would say -- it's an opinion -- 25, 30 years, which will take you into the year 2010. It's just a guess.

"If everybody wants to run away from the city, as they are now, because of what's happening in the city, it could happen much sooner. I mean, you're asking me to speculate."

Page 70, line 12:

"Q You stated that it was your honest belief that in the next 10 to 15 years there would be 50,000 people.

"A People, not families.

"Q Not families, people, at Rio Rancho.

"A I believe that, yes, barring a continuation of this housing recession, Ms. Hynes. A lot of people want to buy homes and they just can't sell their own homes, so they can't move. But assuming they are normal, I believe that would be the case.

"Q I am showing you a statement that states that "It is reasonable to assume that the rate of growth at Rio Rancho Estates in the foreseeable future will be of a magnitude of 1,000 persons a year," which would mean in 10 years, 10,000 people and in 15 years, 15,000 people.

"Do you disagree with that?

"A Based on what you've shown me, I'd like to revise my estimate because I remember this, Ms. Hynes.

"I would say that by the year 2000, 25 years, there will be 30 some odd thousand people.

"Q So there are roughly 5,000 now, you are saying --

"A Roughly 6,000.

"Q Why don't you restate what your belief is as to the growth of population at Rio Rancho Estates?

"A If all things -- if the growth rate to date remained constant, I believe that that figure is a sensible and reasonable figure, 30,000 by the year 2000 living in over 10,000 residences.

"Q Rio Rancho has been in existence for 14 years and there are presently approximately 6,000 people there.

"Are you saying that the rate of increase is 1,000 people per year at Rio Rancho?

"A No. It has grown -- there are about 6,000 people in -- Rio Rancho has been in existence for 14 years or 13 years, so how did you arrive at that?

"Q The statement that I am showing you says that "Based on experience to date, it seems reasonable to assume that the rate of growth for the foreseeable future will be of a magnitude of 1,000 persons yer year."

"What is that based upon?

"A That's based upon approximately 350 residences per year, which is very conservative, multiplied by 2.8 people per family.

"The experience to date has been that the families who live there -- some are retired and some have children -- but it averages out to 2.8 people per household."

Page 73, line 9:

"Q So on the basis of 350 houses in a year, in 10 years, you would have 3,500 houses and in 100 years you would have 30,500 houses, correct?

"A No, 35,000.

"Q 35,000, right?

"A Houses.

"Q So in 100 years, based upon that rate of growth, you would have 35,000 homes and in 200 years you would have 70,000 homes. Is that --

"A That's the way the arithmetic works out."

September 9, 1975, page 100, line 8:

"Q In your HUD filings you have stated that this will be a residential community of approximately 80,000 families.

"When do you expect the subdivision to reach total of 80,000 families, in what year?

"A I don't know. I don't think the property report says that they expect it to be -- the maximum number of families that there could be, if everyone built on each lot, would be 77,000 to 80,000 families. A more reasonable assumption as to the number of people that would live there, based upon the rate of construction of 350 single family houses per year, which has been roughly the track record, would mean that by the year 2150 there would be probably 50,000 families, which was a conservative figure."

Page 118 of the grand jury testimony on September 9, 1975, line 13:

"Q There are roughly 24,000 lots available for exchange, and based upon -- and we've also settled that the company is putting the utilities in these company owned building areas, therefore, based upon your projections, it would be at 350 homes a year close to what, roughly 80 years before these building areas would be filled?

"A I guess that's right.

"Q And only then does the possibility even exist that the company would start bringing utilities to lots other than the building areas, correct?

"A Correct. So what?"

Grand jury testimony of October 21, 1975, page 58:

"Q The commercial and multiple dwelling purchasers do not have an exchange privilege; is that correct?

"A I learned that two weeks ago.

"Q Do you mean in 1971, May 19, 1971, when you were writing a letter with respect to these specific contracts for commercial and multiple dwellings, you were not aware that there was no exchange privilege?

"A No, ma'am. This memo had to do with truth in lending, and I knew -- I assumed you would ask me this question. I never was asked a question or rendered a legal opinion or pass any judgment concerning commercial and multiple-family dwellings. I was not aware of how they were selling it or where they were selling it.

"Q Let me ask you specific questions. Based upon this letter you are referring to the purchase agreements for commercial and multiple dwellings. I take it you read the contracts?

"A The face of it. I wasn't addressing myself to it.

"Q You are saying that based upon your reading of the contract, you were not able to ascertain there was no exchange privilege for commercial and multiple dwelling?

"A It never rang a bell. I never reviewed it for that.

I was reviewing it for the truth in lending.

"Q I am asking you whether in all these years that you worked with the company and dealt with the contracts as evidenced from the correspondence here, that it never -- that you were never able to ascertain that there was no exchange privilege for commercial and multiple dwelling lots?

"A I could have been able to ascertain, but I never did.

"Q Did you read the contract?

"A Only the face of the contracts. I never reviewed the back of the contract. I never did.

"I was asked one question in all the years I have been there, and that had to do with truth in lending for which I consulted with Ed Winslow as to whether truth in lending was applicable to commercial and multi-family contracts.

"Q In this letter, May 19, 1971, paragraph number 2 says: In preparing the transfer -- commercial multiple dwelling contract. What is that?

"A I didn't prepare it.

"Q What is a transfer commercial multiple dwelling contract?

"A I really don't know. I really don't know. This was in '71. I just don't know. Apparently they had so many forms of contracts, and I really don't know this. I really don't, Ms. Hynes.

"Q What was the provision for providing utilities for people that bought commercial and multiple dwelling lots?

"A From what I learned recently, none."

(Continued on next page.)

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Testimony of September 11, 1975, page 57, line 25:

"Q Mr. Friend, you mentioned before in the morning session that you had been to Albuquerque several times, and then you pointed out some other subdivisions in the northwest portion of Bernalillo County. I think you mentioned Volcano Cliffs?

"A Yes.

"Q And Horizon?

"A Yes.

"Q Then yousaid that Volcano Cliffs you believed some of the land was not developable?

:A I said I didn't know whether it was developable.

"Q Why?

"A Because of the volcanic cones and peaks that you see in that area.

"Q How much land, apart from the volcanic cones and peaks, does Volcano Cliffs own?

"A I don't know, but I would say it is substantial. Just looking at it, I have never looked into it, but looking at it, I would say it is at least a thousand acres.

"Q And are there some homes at Volcano Cliffs?

"A I have never driven there. I have seen a sign indicating that they are building some homes, yes, but I have never seen the homes.

"Q That is then at least a thousand acres that is developable?

"A Yes, and that is the area where Mr. Bellamah has that joint venture with the bank.

"Q That is south of Rio Rancho Estates, I take it?

"A I would say it is basically between Rio Rancho Estates and Albuquerque, in the same direction that Rio Rancho is.

"Q Then you mentioned that Horizon Corporation had a subdivision that was adjacent to Rio Rancho, and it is adjacent to Rio Rancho on the south; is that correct?

"A To the south of Rio Rancho, yes.

"Q That is within Bernalillo County?

"A I believe most of it is, I'm not sure that all of it is.

"Q That is also another subdivision that is between Rio Rancho and Albuquerque?

"A Yes.

"Q How many acres, approximately, are there in

Paradise Hills?

"A I believe it is six or seven or 8,000 acres, something like that.

"Q And what portion of that acreage has been developed?

"A The Paradise Hills?

"Q Yes.

"A I couldn't give you a figure, but I would say quite a bit.

"Q How many homes are there?

"A Quite a few. If I said at least 1,000, I wouldn't be off by very much.

"Q There are 1,000 homes on roughly quarter acre lots?

"A I don't know the size of them. Some of them are apartment houses.

"Q Mr. Friend, how much land has not been developed by Horizon but it available for development for single family homes or residential homes or apartments at Paradise Hills?

"A Let me see if I can give you a rough percentage. If the project is 8,000 acres, and if there are 1,000 homes, I would say probably 80 per cent of it is still unbuilt upon."

September 11, 1975, page 69, line 13:

"MS. HYNES: Let me mark as Grand Jury Exhibit 419-DD, a memo that was previously marked as part of Trial Exhibit 732.

"(So marked.)

"Q The memo is dated January 27, 1971. It is from you, Mr. Friend. It is what you referred to as one of your trip reports to Rio, and it is to Howard Friedman, Chester Carity and Dan Friedman. It refers to your attempts to acquire the state land.

"Let me read from this memo -- let me read beginning with item number 3.

"I had most difficult negotiations -- before I read it, let me ask you to identify it as one of your trip memos.

"A Yes, this is mine."

Page 71, line 22:

"Q First, does that refresh your recollection that the average price for the King property that was purchased was $180 an acre?

"A I said 185, but 180 is correct."

Page 72:

"Q That the company was not willing to pay more than $180 an acre for the state land?

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"A Yes, but I think they ended up agreeing to pay more.

"Q Okay.

"You know that the average price the land was purchased for in 1961 was 178 an acre?

"A I would say that is the ball park figure. I don't know that it is 178, it is probably 175, thereabouts."

September 11, 1975, page 75, line 12:

"Q Today what per cent of the 91,000 acres is developed?

"A I would say about 5 per cent.

"Q 5 per cent?

"A Yes."

That completes the reading of the grand jury testimony, your Honor.

We have nothing further at this time.

THE COURT: Page 70, lines 12 to 15?

MS. HYNES: That's correct, your Honor.

THE COURT: All right.

I gather that completes, then, the testimony for the day, and all we have left is one possible reading and a possible witness.

Ladies and gentlemen of the jury, I wish you a

Merry Christmas.

I also want to tell you that the schedule indicates that we may be through with the government's case on Tuesday -- I will put it in the reverse.

You will not work next Friday, December 31st, you will not work next Thursday, December 30th, and you may not have to work next Wednesday, December 29th.

But we will see you 9:30 Tuesday morning, December 28th.

(The jury left the courtroom.)

MR. FLEMING: Judge, if your Honor please, on behalf of the defendants Carity and Daniel Friedman, I do move for a mistrial as to them and an order of severance based upon Mr. Friend's testimony for reasons that have been stated previously.

THE COURT: The application is denied.

MR. ARKIN: I make a similar application, and I will use Mr. Fleming's words, on behalf of Henry Hoffman and Howard Friedman.

THE COURT: The application is denied.

MR. HOFFINGER: Is the application denied as to all of the other defendants or do we have to --

THE COURT: I thought we had an agreement that all of you would take advantage of all motions made by any other counsel.

MR. HOFFINGER: Yes.

THE COURT: But if you want it directly, I deny your application, Mr. Hoffinger.

MR. RUBINO: And you deny mine, too, your Honor?

THE COURT: Yes.

MR. FLEMING: Good night, your Honor, and have a nice Christmas.

(Adjournment taken to December 28, 1976, at 9:30 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Richard W. Gray	5641	5655	5709	
Antonio Reyes-Guerra	5714	5729	5783	

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121-N	5711	5712
111-C		5718
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Defendants Howard Friedman and Henry Hoffman	Identification	In Evidence
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FN	5669	
FO	5673	5674
FP	5674	5674

Defendants Chester Carity and Daniel Friedman	Identification	In Evidence
BL		5750
FQ		5768
FR		5772
FS	5780	

UNITED STATES OF AMERICA

vs. 76 Cr. 644

AMREP CORPORATION, et al

December 28, 1976
9:55 A.M.

Trial Resumed

(In open court - jury not present)

THE COURT: Good morning.

MS. HYNES: Your Honor, Mr. Rubino and the government have agreed upon a stipulation with respect to the acquisition of additional acreage in or about 1969 through 1971, and therefore we will not have to call former Governor Bruce King.

There are twelve other things that I just want to take up with the Court at this time --

THE COURT: First of all, have other defense counsel seen that stipulation?

MS. HYNES: I don't know whether they have.

MR. ARKIN: I have not, your Honor.

THE COURT: Show them. In case they have objections, they can make it on the record in the absence of the jury.

(Pause)

MR. FLEMING: I would assume that the stipulation is admissible only against Mr. Oberman.

THE COURT: I don't know what it reads. You fellows read it first.

MR. FLEMING: I have, your Honor.

MS. HYNES: I have a copy for your Honor.

(Pause)

MR. ARKIN: May I ask a question, your Honor?

THE COURT: Yes.

MR. ARKIN: That is directed to Ms. Hynes.

Is the agreement to purchase the 30,000-odd acres in evidence?

MS. HYNES: The two agreements referred to in the stipulation I have available. We can offer them --

THE COURT: Show them to Mr. Arkin.

MR. ARKIN: I am familiar with it, if your Honor please. The basic point is that if you read the stipulation by itself, it seems to suggest that the entire 30,000 acres was acquired in 1969, when the fact is that a portion of it was acquired in '69 and a portion in '70 and a portion in '71 and a portion in '72.

And it seems to me that it is somewhat -- well, I won't say misleading, but it is somewhat inaccurate to say that or suggest the entire 30,000 acres was acquired in 1969, as the stipulation appears to do.

THE COURT: It says it negotiated the basic terms of the purchase, and that the terms were embodied in documents signed on January 20, 1969 and August 8, 1969.

If you have no objection, those documents can come into evidence and I assume they will indicate when the properties were to be picked up.

MR. ARKIN: I think we probably ought to put those into evidence.

THE COURT: All right. Do you have any objection to the stipulation with those documents in evidence?

MR. ARKIN: The only objection is that -- I take it his is only introduceable against Mr. Oberman.

THE COURT: Not when the documents come in. They are acts of the corporation. If you were president of the corporation you would be bound by knowledge of the document. How could you avoid it?

MR. ARKIN: I don't know who signed the documents.

THE COURT: Show him.

MS.HYNES: Signed by Mr. Sommerholder.

THE COURT: As the vice-president of Rio Rancho

Estates.

MR. FLEMING: If your Honor please, I object to the entire stipulation as not binding or admissible against -- as evidence against Mr. Carity or Dan Friedman. I object particularly to the second paragraph, which apparently would require the testimony of Mr. Sommerholder.

THE COURT: Would don't need the testimony of Mr. Sommerholder. This is a document executed by the vice-president of Rio Rancho Estates.

MR. FLEMING: That is basically my objection. If the stipulation is received, your Honor, over objection, I would request a limiting instruction to the jury that the stipulation is -- what is set forth in the stipulation is admissible as evidence only against Mr. Oberman.

THE COURT: No, it is admissible against the corporation because I assume the corporation Rio Rancho bought the property and therefore it came in against the corporation; the knowledge of the officers who bought the property and paid for it would be imputed. I don't see how you can avoid it.

MR. FLEMING: I think you can avoid it, your Honor. I do not believe --

THE COURT: We can go through the whole thing and put the documents in. Are you going to object to the documents?

MR. FLEMING: We are not objecting to the documents.

THE COURT: The documents come in and the corporation is bound by them. The corporation is bound by them, the officers and directors are bound by them.

To the extent that the jury wants to bind them, but I can't exclude them against those people.

MR. FLEMING: I would say that your Honor can and if the stipulation is received the jury be instructed that the contents of the stipulation are admissible only against Mr. Oberman.

THE COURT: I will not. Mark those contracts.

MS. HYNES: Your Honor, shall we mark the stipulation as an exhibit?

THE COURT: No. You are going to read it to the jury.

MS. HYNES: The documents referred to in the stipulation will be marked 1570 and 1571.

(Government's Exhibits 1570 and 1571 marked for identification)

MS. HYNES: For the record, 1570 is the agreement executed January 29, 1969; 1571 is the agreement executed August 8th of 1969.

MR. FLEMING: If your Honor please, on the question of at least what I perceive as an imputation of knowledge as to the individual defendants based upon the execution of the document by Mr. Sommerholder, our brief our course is being typed in final, but I would direct your attention, for example, to the case of Phillips against the United States, which was decided in the Ninth Circuit in 1965 in which the Court said that since it is the personal knowledge of the invidious fact which warrants such an inference, that is intent to defraud, nothing less than personal knowledge of that fact will do to establish the fact even circumstantially.

Thus so-called "constructive" notice or knowledge of a circumstance based upon the actual knowledge of a co-conspirator, agent or employee has no tendency, circumstantially or otherwise, to prove criminal intent.

THE COURT: That is generalized language, Mr. Fleming. This corporation was in the business of buying land and selling it.

This is a purchase of 30,000 acres. I will allow it in and the jury may consider it against these defendants. That is my ruling.

MR. FLEMING: I don't want to go further, your Honor. I am just --

THE COURT: I am familiar with the case. That is just general language. It doesn't apply. A corporation buys 30,000 acres of land, its biggest holding, and the president is not supposed to know about it unless the government brings the people who attended a meeting of the board of directors to show that he was present and heard about it? It is not my understanding of the law.

MR. FLEMING: Your Honor is right about the Phillips case. What the Phillips case had to do with were letters from purchasers of land which were held inadmissible to prove that corporate officers knew that the ads were creating a false impression.

THE COURT: I am familiar with that.

MR. FLEMING: That is the basis of our objection, your Honor.

MS. HYNES: Your Honor, there is one other item.

There is in evidence Defendants Exhibit BZ, and it is a property report which has a writing on the cover page. The property report effective date says October 16, 1972. The HUD regulations which required this pritning over this property report did not take effect until December 1st of 1973. HUD allowed property reports that were dated prior to December 1st of 1973 to remain effective as long as this writing was placed over the property report. But the writing was not placed over the property report until at least after December 1st of 1973.

I want the record to be clear so there is no misunderstanding by the jury that as of the date of this property report, which is 1972, that this writing which is in purple, did not appear on that property report as of that date, but in fact did not appear until more than a year later. I have no idea whether the defendants will stipulate that that is the fact as to the exact date.

We are getting from HUD now certified copies of correspondence. We have not received them in the mail as of yet. But certainly that is the fact. The regulation has been cited in our trial brief.

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THE COURT: Mr. Arkin?

MR. ARKIN: Well, your Honor speaks I believe -- the exhibit speaks for itself.

THE COURT: It can't speak for itself, in view of what she has said. That you could use a prior dated report and put that stamp on a year later. It speaks as of the date of the stamp, doesn't it?

MR. ARKIN: I have no knowledge that the stamp was put on a year later. In fact, I must say I very much doubt whether anybody would have taken this report and put a stamp on a year later. I just don't believe that. I don't believe that happened. I believe there is no evidence of that, and I believe if the regulations didn't require it, it may have been put on voluntarily in any event and used by the company in that respect, voluntarily.

THE COURT: All right. Therefore you say as far as you know this speaks as of the date of the document?

MR. ARKIN: Yes, your Honor, insofar as I know. I have no contrary knowledge whatever.

MS. HYNES: Just to complete the record, your Honor, there is also in evidence a property report of the exact same date which is Exhibit 798 in evidence. Again, it is dated October 16, 1972. It does not have the language written over it.

THE COURT: That is something you can argue to the jury. Mr. Arkin won't agree that they didn't put that on, or they withheld putting such a stamp on until HUD passed its regulations.

MS. HYNES: Then I'd ask your Honor two things: One, your Honor can take judicial notice that the regulation requiring that specific type of language, and indeed it is set forth, that specific format is set forth in the code of regulation recited --

THE COURT: That doesn't answer the question, does it?

MS. HYNES: That is one point.

THE COURT: You want the inference drawn that the regulation didn't come in until then, the defendants couldn't possibly have thought of it until then.

MS. HYNES: The second point is that until we get the certified copies which may come in today, the government would seek to introduce those certified copies.

THE COURT: Certified copies of what?

MS. HYNES: Of correspondence between the company, AMREP, and the Department of Interstate Land Sales dealing with specific situation of putting that disclaimer on as of -- at sometime after December of 1973.

THE COURT: You mean correspondence would indicate that the company did not use the disclaimer until the date of the HUD regulation?

MS. HYNES: That's correct. That correspondence is in the mail, and we would seek to offer that correspondence. I don't want the government to have to wait in terms of resting until we receive it, but I certainly want to apprise the court that we would offer that correspondence to show that that disclaimer was not put on until after December of 1973.

If we receive it today, we will offer it today. If we don't, we can't.

THE COURT: What else do you have to put into evidence besides the correspondence between HUD and the corporation?

MS. HYNES: In terms of general or in terms of that problem, your Honor?

THE COURT: Anything else you want to put in today?

MS. HYNES: Yes. We are offering today documents which relate to Counts 72, 73, 74, 75, 77 and 79 of the indictment. These are -- 71, 2, 3, 5, 77 and 79. These are documents which relate to advertisements which were run in various media on either radio or television. They are shown by documents that with one exception came from corporate files. They are basically the media placement order, an affidavit of performance, which is an affidavit that the commercial in fact ran on the date that is set forth.

THE COURT: What are their numbers?

MS. HYNES: The numbers are 171, which relates to Count 71; 172, relating to --

THE COURT: Let me see it.

(Pause.)

THE COURT: Yes?

MS. HYNES: Similar documents relate to Counts 72, 73 --

THE COURT: Let me see them.

(Pause.)

THE COURT: Any objection to these, Mr. Arkin?

MR. ARKIN: May I see what it is that you just offered, Ms. Hynes?

(Pause.)

MR. ARKIN: Your Honor, I understand that certain representations or agreements were made by Ms. Cross of my office with Ms. Hynes and only Ms. Thompson is familiar with them. So, I am going to ask her to speak to these exhibits. I will say that I do understand, as much as I understand of this situation when it was passed by me is that my position was these did not prove anything, that is to say, they did not prove that the particular communications were at issue in the last ten counts of the indictment were actually made. And I believe --

THE COURT: Is there an affidavit from the advertising agency? That is proof that it was made.

MR. ARKIN: There is nothing in the particular affidavit --

THE COURT: If you say Ms. Thompson knows about it, let her talk.

MR. ARKIN: As I understand, these affidavits do not set forth what the nature of the communication or advertisement was. In other words, there were advertisements for condominiums and there were advertisements for homes, and I don't believe that those particular advertisements have anything to do with what is being charged in the last ten counts.

And with that, Ms. Thompson may know more than I do.

MS. THOMPSON: Very briefly, your Honor, Mr. Arkin has covered it. Basically, I don't know whether Ms. Hynes has made a representation on the report. The agreement, as I understand it that was made between Ms. Cross and Ms. Hynes, was that we would not object to the admission of the documents provided there was either an affidavit or performance or proof of payment for the particular commercials, provided that the government represented that they had in their possession a commercial that conformed to each commercial which is listed in the indictment. And I don't know that that representation has been forthcoming.

THE COURT: Do you have that commercial?

MS. HYNES: Your Honor, first of all, the representation -- there was no agreement about the latter part of Ms. Thompson's statement about the commercials. We do have commercials that cover these counts. I believe that there may be one there we have subpoenaed from the company and the company has not produced it. But the point is that the last ten counts charge that advertisements for Rio Rancho were made on various media, radio and television.

The documents are the proof that these advertisements in fact were shown on the various media. They are Rio Rancho advertisements, they are advertisements that were shown on the particular day. We do have an affidavit --

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THE COURT: I think you have to have the wording of it. The mere fact that somebody advertised for Rio Rancho may have nothing to do with the sale of land. It may have been the sale of a swimming pool or membership in a golf course, I don't know.

You want the inference drawn that these went to the sale of land, the way they sold land at dinner presentations, et cetera.

MS. HYNES: Your Honor, we have the commercials.

THE COURT: Then show them to Mr. Arkin.

MS. HYNES: We have made them available to the defendants to look at.

MS. THOMPSON: Your Honor, we were told that the government had a slew of commercials which they had subpoenaed. They have yet to offer to match a particular commercial to a particular count in the indictment, and that is what we have been asking for.

THE COURT: I think that they are entitled to that, Ms. Hynes.

MS. HYNES: Your Honor, the commercials are matched to the counts in the indictment. For example, in Count 73, refers to the Rio Rancho commercial. The number of the commercial is on the affidavit of performance. That is the form of identification.

THE COURT: Take the specific one and show it to Ms. Thompson.

MS. HYNES: These are the commercials.

(Handing)

(Pause)

THE COURT: Let's start with the first one. 71. WOR-TV.

MS. HYNES: RR-2302.

MS. THOMPSON: It is your position that that is the commercial which is covered by the indictment. We had not been told that before.

THE COURT: What is the number?

MS. THOMPSON: RR-2302.

THE COURT: What is that? Is that an exhibit number in this case?

MS. THOMPSON: No, it is an internal number that the company --

THE COURT: Let's call that marked for identification Plaintiff Exhibit 171-A, which I will call RR-2302.

MS. THOMPSON: Your Honor, I ought to point out that the can which was handed to me by Ms. Hynes contains six commercials, obviously five year commercials.

THE COURT: Do you want to look at them? You can look at them.

MS. HYNES: They have seen them.

MS. THOMPSON: If it is not her claim that they are not related to the indictment, I don't want to look at them. That has been our problem.

THE COURT: That can relates to what count in the indictment, Ms. Hynes?

MS. HYNES: In Count 71.

THE COURT: I gather that you have given something called RR-2302, which is the copy used in conjunction with Count 71.

MS. HYNES: That is correct.

THE COURT: All right. That takes care of Count 71.

Now, what about the copy used for Count 72? WPIX, 27 spots.

MS. HYNES: Your Honor, with respect to Count 72 there are several commercials that are run on November 18th. We have a whole range of commercials on this can, and they include RR-2296, RR-2294, RR-2297, 2293, and the affidavit of performance shows that all of those commercials were shown on November 18th.

THE COURT: All right. That can then will be marked Government Exhibit 182-A for identification.

Ms. Thompson, do you have RR-2303, which refers to Count 71?

MS. THOMPSON: No, the can was handed back to the government.

THE COURT: Where is the can for that?

MR. KAUFMAN: Your Honor, 2302 is on the can as well that we just marked 172-A. So that can constitutes both 172-A and 171-A.

(Government Exhibits 171-A and 172-A marked for identification)

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THE COURT: Exhibit 171-A is the copy for Counts 71 and 72, is that correct?

MS. HYNES: That is correct.

THE COURT: All right, Ms. Thompson, do you have that?

MS. THOMPSON: I have that information now, yes, your Honor.

THE COURT: All right. What about Count 73?

MS. HYNES: Count 73 refers to a commercial, RR-1896, and we have that commercial that was produced by the company, which states RR-1896.

THE COURT: That will become Government Exhibit 173-A.

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(Government Exhibit 173-A marked for identification)

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THE COURT: Do you have that, Ms. Thompson?

MS. HYNES: Yes --

THE COURT: Wait. Give it to Ms. Thompson. Have you seen that, Ms. Thompson?

MS. THOMPSON: I now see it.

THE COURT: Have you seen it before?

MS. THOMPSON: Ms. Dacey informs me that the film was tendered to us during discovery but at that time it was not tied to the particular count in the indictment.

THE COURT: Are you going to raise the objection to these now, or is Mr. Arkin?

MR. ARKIN: I will delegate all the objection making with respect to these exhibits to Ms. Thompson.

THE COURT: All right. Ms. Thompson, do you have any objection to Government's Exhibit 171-A, which is the copy of Count 71 and 72?

MS. THOMPSON: I have no objection, your Honor.

THE COURT: All right. So, Government's Exhibit 171-A is in. I gather from what Mr. Arkin said before, that since 171-A is in, then there is no objection to Government's Exhibit 171 and 172, because they are the contracts to which the copy relates.

MS. THOMPSON: There is no objection.

THE COURT: All right.

MS. THOMPSON: To the document itself.

THE COURT: Now we are up to Government's Exhibit 173-A. You have RR-1896. Any objection there?

MS. THOMPSON: No, there is no objection to the document.

THE COURT: All right. It's admitted, then. I gather since 173 has been admitted and typed up to the contract contained in Government's Exhibit 173 for identification, there is no objection to the admission of Government's Exhibit 173. What about 175?

MS. HYNES: 175, your Honor, refers to RR-2698 and 2269.

THE COURT: Mark it.

XXXX (Government's Exhibits 171, 172 and 173 were received in evidence.)

XXX (Government's Exhibit 175-A marked for identification.)

MS. THOMPSON: Your Honor, we do object to RR-2269.

MS. HYNES: Your Honor, we will withdraw that offer and stay with RR-2698.

THE COURT: Do you object to Government's Exhibit 175 for identification, which now consists only of RR-2698?

MS. THOMPSON: There is no objection now that the other one is withdrawn.

THE COURT: Therefore I gather there is no objection to Government's Exhibit 175?

MS. THOMPSON: Correct.

THE COURT: What's the copy for Count 177?

XXX (Government's Exhibits 175 and 175-A were received in evidence.)

MS. HYNES: 177, your Honor, the document 177 --

THE COURT: What is the copy for Count 177?

MS. HYNES: With respect to the documentation of 177, there is a placement order for advertisements for Rio Rancho Estates. It says key telephone -- to call a number.

In other words, there is an ad and then there is a telephone call, a number to be given to call. What the exact copy of the ad is, is not reflected in the documentation.

However, the documentation reflects that ads ran for land development, Rio Rancho, on the date set forth in the indictment, which is March 26th of 1973 on WINS radio.

MS. THOMPSON: We would object to that, your Honor.

THE COURT: I think I have to sustain the objection to that. You can get the copy from the station.

MS. HYNES: Your Honor, I am unable to determine from the documentation what the ad is. I only know that an ad for Rio Rancho ran on that date.

THE COURT: That can be obtained from the station, the copy they used. Call up WINS and tell them you want a copy.

MS. HYNES: I have whatever records the stations have.

THE COURT: And they don't have the copy?

MS. HYNES: They don't have, no.

THE COURT: Then I sustain the objection. The fact that an ad ran does not mean it dealt with the problem that you have in this lawsuit.

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MS. HYNES: Your Honor, there is a notation on 177, "1629-A," which, based upon the document --

THE COURT: The notation on what?

MS. HYNES: On document 177 for identification.

THE COURT: Yes?

MS. HYNES: Which is "1629-A." There is a similar notation referring to a Rio Rancho ad by that number RR-1629 on 179 which leads me to believe that 177 refers to a Rio Rancho ad with the number 1629.

THE COURT: I don't know how I can draw the inference.

What have you got on 179?

MS. HYNES: On 179 there is a reference to a Rio Rancho ad 1629, there is a record of payment for that advertisement, and a record that the advertisement ran on July 6th of 1973.

Now, we have subpoenaed 1629 from the defendants and have not received that. But it is clear that an ad for Rio Rancho with their designated number 1629 ran and there is a record of payment that they paid for that advertisement.

THE COURT: I need the copy, Ms. Hynes.

MS. THOMPSON: No such subpoena was served on the corporation.

THE COURT: Who did you serve?

MS. HYNES: Ms. Thompson has the subpoena and I served one on Ms. Dacey requesting any of the ads that are referred to in the documents that were numbered 171 through 179 if they had not already been produced, including records of payment.

In response to that subpoena we received the records of payment for that particular advertisement, but we did not receive the advertisement.

MS. THOMPSON: I don't recall such subpoena, your Honor. I object.

THE COURT: Take a look.

MS. THOMPSON: I have two subpoenas. One is dated December 22nd, asking for an affidavit of performance and/or record of payment for a television advertisement for Rio Rancho Estates placed on WABC-TV on or about November 23, 1974 and a record of payments for all advertisements listed in trial subpoena dated December 20, 1976.

I also have a subpoena dated December 20, 1976 that asks for an affidavit of performance for one, two, three, four, five advertisements. But I don't have a subpoena requesting any advertisement.

THE COURT: You mean copy of advertisement?

MS. THOMPSON: Copy of advertisement.

THE COURT: Yes, Ms. Hynes?

MS. HYNES: Your Honor, my recollection is, and there is handwriting on the second subpoena, and it was based upon a conversation with Ms. Dacey. If there has been a miscommunication, the subpoena reads "record of payment for all advertisements."

My recollection is I was also asking for all advertisements.

The question now becomes whether there is an advertisement 1629. If there is, we would want it produced and offered in conjunction with the exhibit.

THE COURT: All right. You have now been asked to produce 1629.

MS. THOMPSON: We will look for it.

THE COURT: Anything else you want to offer?

MS. HYNES: Yes. Your Honor, we are also going to offer the charts of the corporate officers.

THE COURT: Pursuant to the stipulation that has been entered into?

MS. HYNES: Yes. The charts have been reviewed and we have the charts in court.

THE COURT: Where are they?

MS. HYNES: With respect to two of the charts, they still have to be mounted.

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Sorry. Withdrawn. They are mounted.

Your Honor, the first chart the government would offer would be the chart relating to the officers and directors of AMREP Corporation, which includes the stockholdings only of the individual defendants. It does not include the stockholdings of families of the individual defendants.

The one addition that does not appear on the chart because we had not gotten the final figures from the defendants until this morning, but we will add in at the bottom, is that with respect to the chart on AMREP, which we will have marked as Government's Exhibit 1550 for identification, the following statement will also be added at the bottom:

That during the period from at least 1963 until 1975 the number of common shares outstanding has ranged from approximately 2,508,000 shares to 3,354,000 shares.

XXXX (Government's Exhibit 1550 was marked for identification.)

THE COURT: What is the one that is now leaning against the mosaic?

MS. HYNES: That is 1550.

THE COURT: Exhibit 1550 for identification. And that is a chart --

MS. HYNES: -- of the offices held and the stock owned by the defendants in AMREP, and also has a designation for members of the executive committee.

I might also add that there is one omission that we will letter in. In 1963, Chester Carity was a director of AMREP, and we have to include that designation and the designation that I just read to you about the outstanding shares.

THE COURT: Any objections to Government's Exhibit 1550?

MR. ARKIN: I have an objection. First, we object to the stockholdings appearing on the chart on the grounds that we think it would be entirely irrelevant and pretty inflammatory, and Mr. Fleming says to me that he believes it was ruled out.

THE COURT: I put it in, I thought.

MS. HYNES: That's correct, your Honor.

MR. FLEMING: I just recall --

THE COURT: My recollection is that I finally said it went in.

What else have you got, Mr. Arkin?

MR. ARKIN: Secondly, or thirdly, whatever it is, with respect to the 1975 designation for Hoffman as a consultant, I don't know if cosultancy is an office, a small point.

THE COURT: An employee, not an officer or director.

MS. HYNES: Your Honor, we submitted this chart over a period of weeks. It has been gone over with a fine-tooth comb by Ms. Dacey and by everyone else. We wouldn't have sent it to the printer until we got okay's every day. We went back and came back.

THE COURT: A consultant is not an officer.

MS. HYNES: It was never raised, your Honor.

THE COURT: It is now being raised.

MR. ARKIN: Take a piece of tape and put it right across it.

THE COURT: I sustain the objection. It is not an officer.

MR. FLEMING: I object on the stockholdings. I think it is inflammatory, prejudicial and irrelevant.

THE COURT: Overruled. 1550 for identification comes in with the changes as indicated. That is, the removal of "consultant" for Hoffman and whatever you said you wanted to add to it.

MS. HYNES: Thank you, your Honor.

MR. ARKIN: One other thing, too. The executive committee's designations on there with those asterisks seem to imply some degree of importance or something about the executive committee, and there is no evidence as to what the executive committee did or did not do or what it was supposed to have known or not known, and I think that that particular portion of the chart, not that it is very revealing otherwise, certainly is very enigmatic. I don't think the jury is going to know what an executive committee is. And to have them speculate about that is not fair.

THE COURT: Objection overruled.

MR. RUBINO: That copy I saw in respect to Oberman showed "resigned" and the date of resignation in respect of each position. This final copy does not. The one I saw --

MS. HYNES: If you would show me that, I would be interested in seeing it.

MR. RUBINO: It shows, written on the side --

MS. HYNES: It wasn't my handwriting.

THE COURT: Did he resign?

MR. RUBINO: Yes.

MS. YYNES: I have agreed to enter into a stipulation with Mr. Rubino that Mr. Oberman retired on September 30th of 1969, and he is listed for the office that he held. He held offices in 1961 and '62. Thereafter he is not listed as an officer, and I think we covered this the other day.

THE COURT: It doesn't show him as an officer or director. So what is your objection?

MR. RUBINO: Let it in as is. I'll withdraw my objection. The stipulation refers only to retirement.

THE COURT: That takes care of 1550. What is the next one, Ms. Hynes?

XXX (Government's Exhibit 1550 for identification received in evidence.)

(Continued on next page.)

MS. HYNES: The next one is 1551, which is office held by the defendants in Rio Rancho Estates, and it lists the offices held by the various defendants.

THE COURT: Any objection?

MR. FLEMING: I think it is irrelevant.

THE COURT: Objection overruled.

No other objections? 1551 comes in.

MR. FLEMING: The reason I think it is irrelevant is that it infers a state of knowledge which I think all of us know is not in accord with the realtity, putting this case aside, of American business.

Rio Rancho is a subsidiary of AMREP. It is very natural that these individuals would be directors or officers of the subsidiary.

I think the jury can have the impression, simply because someone is an officer of a subsidiary, that he has knowledge of every letter that the subsidiary receives.

THE COURT: The jury is entitled to know the document.

MR. FLEMING: All right. My objection is overruled.

THE COURT: 1551 is received.

(Government Exhibit 1551 received in evidence)

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MS. HYNES: 1552 is the offices held by the defendants in ATC Realty.

THE COURT: Do you object?

MR. ARKIN: I want to object along the same lines as Mr. Fleming in respect to the previous exhibit, but I want to add one thing.

The evidence in this case has demonstrated, I believe, that ATC largely was run as its own feifdom, if you will, and I think that while your Honor --

THE COURT: Whose feifdom?

MR. ARKIN: Mr. Geller, Mr. Miller.

THE COURT: Mr. Carity, Mr. Friedman.

MR. ARKIN: No.

THE COURT: Yes.

MR. ARKIN: No.

THE COURT: Yes.

MR. ARKIN: I disagree.

THE COURT: Objection overruled.

Next objection?

MR. WEIDNER: I should mention, on this chart as well as the other charts, Mr. Friend resigned as a director and officer of AMREP and the subsidiaries on November 9, 1975, I believe, and perhaps the chart should in fact, I think the chart should, reflect those resignations.

THE COURT: That's right. You have him there for the whole year of '75.

MS. HYNES: We can do until the date of the indictment. He resigned after the indictment. The indictment came down on October 28th of 1975. We can put in director until October 28, 1975, which does include Mr. Friend for that period.

THE COURT: All right.

MR. HOFFINGER: Your Honor, in connection with the stockholdings, your Honor --

MR. FLEMING: I did not on that.

THE COURT: 1975 is going to be the year. It is going to be October 28, 1975.

MR. FLEMING: I see no reason to do that. What happened on October 28th? Anything?

THE COURT: Yes. The indictment.

MR. FLEMING: But what happened with respect to their position? Anything?

MS. HYNES: I am simply saying in response to Mr. Friend's counsel's arguments --

THE COURT: That he resigned in November. It shows an entire calendar year, Mr. Fleming, 1975.

MR. FLEMING: But if Carity or Dan Friedman jqjw 4

did in fact resign sometime before January 1, 1976, then I have no objection to a notation.

But I object to the notation if that was not the fact, since to put the date in would infer or could possible cause the inference of resignation on the date of the indictment, which I think is a negative inference

I think it should reflect the fact. If they remained as whatever they were through calendar 1975 --

THE COURT: But the indictment ends the scheme.

MR. FLEMING: I understand that, if your Honor please. But what I am saying is that to put there "director" up to a certain date can give rise to the inference that they quit on that date because of the indictment, and if that is not true, that shouldn't be there.

MS. HYNES: If Mr. Weidner withdraws his objection, then we have no problem.

MR. FLEMING: You can do it with Friend, but I don't want it done with my people.

THE COURT: I think Mr. Fleming has a point. I think next to Friend you put "resigned" whatever the date is.

MR. HOFFINGER: Your Honor, I know that your Honor has ruled, but I would just like to take a moment, perhaps because we did some research on the question of profit.

You recall your Honor --

THE COURT: That is overruled. I made my ruling. I don't want any more argument on it.

MR. HOFFINGER: There is another point on that that Ms. Hynes added.

THE COURT: It was argued in September, it was argued in October, it was argued just now. Everybody spoke and I am finished with it. You can't keep reopening every ruling I make with another counsel getting up and getting a new idea. We have to move on.

(Government Exhibit 1552 received in evidence) xxx

MR. WEIDNER: Your Honor, may I have the same notation on the chart as to Mr. Friend's sale of the sotck also on November 1975, such little stock as he had? That would apply to 1550.

THE COURT: What else are you offering, Ms. Hynes?

MS. HYNES: The final chart, your Honor. Can I just be clear on what Mr. Friend wants in terms of his sale of the stock? I have no information --

THE COURT: The stock was sold whatever the date is.

MS. HYNES: But, your Honor, no other sales of stock are designated on that chart, and the sales have been substantial. I think that that gets us into the whole situation of sale of stock and raises the inference --

THE COURT: The other defendants don't seem to mind except Mr. Friend.

MS. HYNES: The government minds, your Honor --

THE COURT: But I am sustaining the objection, Ms. Hynes.

MS. HYNES: Ca we have the information? If you can provide me with the information --

MR. WEIDNER: I'll be happy to.

THE COURT: What else are you going to put in?

MS. HYNES: 1553 is a chart of the offices held by the defendants in Double R Realty, Inc.

THE COURT: What is Double R Realty?

MS. HYNES: The broker who was a member of the multiple listing service of the Board of Realtors.

THE COURT: What do you need that for?

MS.HYNES: Your Honr, when Mr. Ron Williams testified, he was the person from the multiple listing service of the Albuquerque Board of Realtors, we sought to introduce, and he testified about Double R Realty.

He testified about --

THE COURT: Yes.

MS. HYNES: And he also testified about if Rio Rancho was a member, then the name was changed sometime in '71 to another name and then in '73 to Double R Realty, and that Double R Realty was a member, received the listings and also received the minutes and notice of the letters that was sent out by the Albuquerque Board of Realtors with respect to the lack of a local market for the land at Rio Rancho.

At that time we sought to introduce documents which reflected who the officers and directors of Double R were. Your Honor ruled that it was covered by the chart.

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THE COURT: No, I think the discussion there was as to what the stipulation was at the time we made the chart up, and the report clearly shows that the charts were to go only to the defendant corporations; not to some B&B or R&R or OED.

MS. HYNES: Your Honor, I believe it was the last time we met, we raised the problem that the government wanted to have additional subsidiaries listed.

Your Honor overruled that offer with the exception of Double R Realty, and that is in the record for the last --

THE COURT: Let me see it --

MS. HYNES: -- meeting.

THE COURT: December 22nd is the last session of the court.

MS. HYNES: If it wasn't the last session, it was next to last.

(Pause)

MR. DEVORKIN: I think I have found it, your Honor.

THE COURT: What page, and what date?

MR. DEVORKIN: I have found the date. I am looking for the page now.

(Pause)

MS. HYNES: Your Honor, on page 5552 of December 22nd transcript --

THE COURT: It can't be December 22nd. That starts with 5642.

MS. HYNES: The 21st.

(Pause)

THE COURT: What about Rio, RR? Do you want to concede that it is a wholly owned subsidiary of AMREP?

MR. ARKIN: Rio Rancho?

THE COURT: No, RR Realty.

MS. HYNES: The designation in the record is RR, but the exact title is Double, with the word "Double" spelled out. Double R Realty, Inc.

MR. ARKIN: As I understand it, it is either a subsidiary of Rio Rancho or of AMREP, I'm not clear which. I don't know which.

MS. HYNES: It's a subsidiary of AMREP.

THE COURT: Who represents AMREP here?

MR. ARKIN: Mr. Lavinsky represents AMREP.

THE COURT: Mr. Lavinsky, is RR, Double R Realty Corporation, a subsidiary of AMREP, your client?

MR. LAVINSKY: Your Honor, it is a hundred percent subsidiary of AMREP.

MR. WEIDNER: It seems to me, your Honor, the fact that a person is an officer of Double R Realty, has little if any probative force in this case.

AMREP I think had some sixty-nine separate subsidiaries. The fact that someone happened to be designated an officer of any one of those sixty-nine subsidiaries is immaterial if not irrelevant to the proof in this case.

I would object to this particular chart as to Double R Realty for that reason.

MR. FLEMING: I join in that objection.

MR. ARKIN: I join in that objection also.

THE COURT: What is the importance of this Double R Realty testimony?

MS. HYNES: Your Honor, Double R Realty was the, as I stated earlier, the broker that was listed for a time with the Albuquerque Board of Realtors multiple listing service. It received listings relating to the vacant land at Rio Rancho, it received the notice of the Albuquerque Board of Realtors that it was going to send out a letter to people inquiring about resale, that there had been 690 listings of resales and little if no local market for the land.

The fact that there may be other subsidiaries that have nothing to do with this case is not evidence in this case --

THE COURT: That isn't what I am asking you. I am asking you the relevance of this testimony. Give me the positive, not the negative.

MS. HYNES: Okay. The evidence in the case shows that Double R Realty as the broker, as the wholly owned subsidiary for AMREP acting as a broker and a member of the multiple listing service, was on notice with respect to the listings of vacant land for sale at Rio Rancho; it was on notice that the Albuquerque Board of Realtors was sending out a letter saying that there was little or no local market for this land; it was on notice that of the listings that there were with respect to the land at Rio Rancho, including the listings of Mr. Heinz and the inability of local brokers to sell Rio Rancho lots, also there are letters in evidence from Double R Realty to customers concerning inquiries of resale.

In other words, when certain customers would inquire of the company at times Double R Realty responded with a letter, and there are certain documents from Double R Realty, letters to customers already in evidence.

Finally, it puts the defendants on notice that there was no local market for this Rio Rancho land. It also is very powerful evidence as to what the local situation in Albuquerque was with respect to a resale market for Rio Rancho land. And Double R Realty was the broker who was listed with the multiple listing service and received all of the communications.

Mr. Ron Williams testified that he dealt with a Mr. Rhino from Double R Realty. There has also been testimony in the record that Mr. Rhino was at one time a sales person, a land sales person for Double R Realty, and Double R Realty is very relevant evidence as to what the resale market was.

The defendants Carity, Howard Friedman, and Solomon Friend were the officers and directors of Double R Realty, and that evidence should be in front of the jury.

MR. ARKIN: Your Honor, may I respond to that?

After hearing Ms. Hynes, I think that the offer is more irrelevant than I even thought just a few moments ago. This particular Double R realty is one of many subsidiaries. As your Honor recognized last week, because a man is an officer of a corporation like BBD&O, of your Honor's example, he doesn't know everything the corporation does.

Here you had sixty-nine subsidiaries. All the evidence is these people reposed in New York, that is where they did their business. They were quite obviously, if anything, officers of convenience of any of these sixty-nine subsidiaries. For Ms. Hynes to seek to use this chart to impute knowledge because they were officers of convenience of one of sixty-nine subsidiaries, to me is outrageous. That is the very trouble with the case here.

I don't think that is any evidence at all of knowledge of what Ron Williams said or didn't say. And that is what Ms. Hynes wants to use it for. That doesn't prove that.

THE COURT: I think it tends to prove it. I am overruling the objection. It is up to the jury to determine whether the officer or director had knowledge of this.

Certainly it went to Double R Realty and their business was Rio Rancho business. That was their sole business, as far as I know.

MR. FLEMING: Judge, two things I'd like to add. One is if they know this Mr. Rhino is available, why doesn't he testify.

But the other is, I think that -- at least the Phillips case does deal with that situation, that you can't impute knowledge of a letter or something of that sort to an officer simply because he is an officer.

You have to prove it. That is what Ms. Hynes is trying to do.

THE COURT: I think it has enough probative value to let it in. The rest is argument to the jury.

All right.

MS. HYNES: Your Honor, finally with respect to what the government still has to do, these documents have been ruled on, we would read the stipulation with respect to Mr. Oberman and we have one document that is already in evidence, 657, which we would read to the jury.

Subject to putting into evidence the certification of correspondence from the Department of Housing and Urban Development, the Office of Interstate Land Sales with respect to Defendants Exhibit BZ, we would be in a position -- and subject to your Honor's ruling on the minutes for the board of directors and the executive committee --

THE COURT: I will do that now. You want to read what exhibit?

MS. HYNES: I want to read Exhibit 657 to the jury.

THE COURT: You want the correspondence between HUD and AMREP?

MS. HYNES: That is correct.

THE COURT: And you want me to rule on the offer of the minutes of the board of directors.

MS. HYNES: Yes.

(Continued on next page)

THE COURT: And that is the end of your case?

MS. HYNES: We would also read the stipulation with respect to Mr. Oberman's --

THE COURT: I understand that.

MS. HYNES: And his resignation.

THE COURT: I will rule on the minutes. These minutes, some have exhibit numbers on, some do not. Were they offered as a group or were they offered separately?

MS. HYNES: Your Honor, we can offer them -- since some of them don't have exhibit numbers we can offer them as one exhibit with specific designations.

THE COURT: All right. I will for the record then, read the minutes that I am admitting: December 9, 1971; March 22, 1973; May 24, 1973; November 16, 1973; March 21, 1974; May 23, 1974; and January 24, 1974.

When I say admitted, they are admitted solely or listing the names of the people present at the meeting, the date of the meeting, and the paragraph indicated by penciled brackets where a clip appears. The rest of the minutes are not admitted.

Now, The ones that I am excluding, for the record, are December 16, 1965; March 30, 1966; September 28, 1967; March 21, 1968; July 23, 1968; December 9, 1968; March 28, 1969; July 16, 1969; July 24, 1969; October 8, 1969; January 8, 1970; February 16, 1970; December 2, 1970; March 19, 1971; September 30, 1971; July 14, 1971; January 15, 1971; July 21, 1970. These numbers don't run in order because this is the way they were submitted to me.

January 5, 1970; August 21, 1967; March 5, 1962; April 25, 1972; May 4, 1972; August 2, 1972; August 15, 1972; September 6, 1972; November 2, 1972; November 17, 1972; January 11, 1973; January 15, 1973; April 30, 1973; May 2, 1973; July 19, 1973; September 20, 1973; January 17, 1974; August 7, 1974; October 31, 1974; August 22, 1970; August 23, 1971; August 22, 1972; October 17, 1973. That then I gather completes the government's case except reading those exhibits to the jury?

MS. HYNES: Yes. Your Honor, can we have for the record what the basis of your Honor's ruling was --

THE COURT: Not probative of the facts and issues in the case.

MR. RUBINO: Excuse me, your Honor. Ms. Hynes, I believe you have another stipulation to read to the jury with respect to Mr. Oberman.

MS. HYNES: I have already stated that the government has agreed to stipulate that Mr. Oberman resigned on or about September 30th of 1969 and received pay until the eljb 3

end of the year of 1969.

THE COURT: What's the date?

MR. RUBINO: September 30, 1969. Three months severance pay at that time.

THE COURT: All right. I gather the government rests except for reading these portions to the jury, right, Ms. Hynes?

MS. HYNES: The government rests with the exception of the HUD documents which we want to still put into evidence --

THE COURT: Reading Exhibits 657 and reading the exhibits admitted today?

MS. HYNES: And the stipulations.

THE COURT: And the stipulations and the portions of the minutes you indicated by paper clip which I in turn indicated you could read to the jury?

MS. HYNES: That's correct.

THE COURT: All right. Now we have a problem. Juror No. 12, who has been limping the last two weeks -- I don't know if you have noticed it, but I have -- called in this morning and his doctor has ordered him to bed because the doctor thinks he has a possible phlebitis. He lives in Monroe, New York. I told him, through my law clerk, at least I asked him through my law clerk how long he expected this to be. He said that his doctor insisted that he not move at all from yesterday until tomorrow evening, when he sees the doctor again, who will then give us a prognosis.

I told the juror to call in the first thing Thursday morning to let us know what the story is. I would think that if it's agreeable to all counsel, that I would like to wait until Thursday before I decide what I do with Juror No. 12.

On the other hand, I would not like to hold up the arguments on the motions. In other words, if you are willing to proceed as leaving open the government reading these exhibits to the jury, I am perfectly willing to let them go now, to return Monday morning; in the meantime I will hear argument, on the motions.

You gentlemen have asked to be able to go to Albuquerque. I am willing to sit here, as I indicated a week ago, to 1:30 this afternoon. What motions I don't hear today I will hear tomorrow. I see no point in dragging the jury back tomorrow or on Thursday just to hear some exhibits read to them.

MS. HYNES: That's agreeable to the government, your Honor.

MR. ARKIN: That would be satisfactory to me, eljb

your Honor.

THE COURT: Mr. Fleming?

MR. FLEMING: It is satisfactory to me, your Honor. As long as Ms. Hynes does not attempt to introduce a single iota of evidence beyond what --

THE COURT: I made it absolutely clear. I kept asking three times, is this it.

MR. FLEMING: I think the court has been clear. I am perfectly willing to argue now, if your Honor please, or I am perfectly willing to argue Monday after they rest.

THE COURT: No, I want this done now. I want the defense to proceed Monday.

MR. FLEMING: Fine, I am all right.

THE COURT: Mr. Lavinsky?

MR. LAVINSKY: Agreeable to me, your Honor.

MR. WEIDNER: Satisfactory to me, your Honor.

MR. RUBINO: Satisfactory, your Honor.

THE COURT: All right. We will let the jury go. You can have a smoke, and we will come back and have argument. Mr. Arkin is first. The minutes show that Mr. Friend reported on construction, period. And they are admissible to show that Mr. Friend had other duties besides being counsel. That is the only reason they are admitted.

MR. ARKIN: Your Honor, Mr. Fleming and I between ourselves divided up the argument and we have agreed subject to your Honor's rulings that Mr. Fleming would take the first part of the argument and I would take the last part of the argument.

THE COURT: I don't care how you do it. All I know is that I should quit at one. I am quitting at 1:30. I am having a sandwich and container of coffee at my desk to work this out. But I must leave at 1:30.

(Recess.)

(Continued on next page.)

(Jury present.)

THE COURT: Ladies and gentlemen of the jury, you recall last Tuesday, I think it was, I told you that you would not have to work this Thursday or Friday and perhaps you would not have to work tomorrow. I can tell you, you not only do not have to work tomorrow but you don't have to work the rest of the day.

We have reached the end of the government's case. There will be some reading of exhibits to you Monday morning. But you are free from now until Monday morning at 9:30. We will sit on Monday from 9:30 to 1:30.

I should tell you that Mr. O'Leary called in. He wasn't feeling well, but he expects to be back with us Monday morning.

And we wish you a Happy New Year. 9:30 next Monday morning.

(The jury left the courtroom.)

THE COURT: You may proceed, Mr. Fleming.

MR. FLEMING: If your Honor please, your Honor knows the standard on motions such as this and I will not repeat it. Your Honor also knows the limits of a mail fraud case. They are, as I represent them, misrepresentation in bad faith by someone, and I will argue the question of falsity principally, Mr. Arkin will argue the question of good faith principally, and each of us with regard to our individual defendants will speak very briefly on the matter of connection.

Your Honor will recall the other day at the side bar when I said something about this being a contract case. What I meant by that was that this is a case which in our view has to do with the discussion of contracts to buy land in New Mexico.

I have one of those contracts, which I just took from the government at random. I think it is typical. It is Exhibit 1222-S, and I'm only using it to make my basic point with regard to a scheme to defraud.

The contract is a very simple document, as your Honor knows. It consisted of a single page front and back. It made certain representations each of these contracts set forth specifically the amount of land that was purchased, the date of the purchase, the unit, block, lots purchased and the purchase price and the terms of the payment.

It set forth the interest. It set forth in bold caps, and there is other evidence this was also made known to all of the potential purchasers, the refund guarantees. That is, the buyers had six months to cancel under certain conditions.

It stated also as a matter of contract that the parties to the contract understood and agreed that the agreement represented the entire agreement between the parties and that no agent or representative or seller, in this case Rio Rancho, shall have any authority whatsoever to change or modify this agreement in any manner or to make any other agreement or representation on behalf of the seller.

And of course on the back of the contract are certain guarantees and conditions of sale, one of which is the exchange rate.

Now, if your Honor please, I am not an expert in mail fraud cases. I haven't tried all that many, although I suppose I have tried my share. But this is, to my knowledge, the only alleged mail fraud case in which everything the purchaser bargained for as a matter of contract that purchaser received. Every promise made as a matter of contract was kept. And indeed, if there was any amendment of the contract, the evidence is uniform that those amendments were in favor of the purchaser and at the purchaser's request.

As far as I recall, but certainly on a concensus basis, we have 45,000 purchasers. The government has investigated the case for about three years, but they have presented a limited number of victims.

Now, I understand that of course one reason why they have presented a limited number of victim witnesses is the argument against cumulation. But the fact would seem to be that after three years the supposed victim witnesses, or purchaser witnesses as I will refer to them, who the government has chosen to call necessarily are the cream of their crop; and yet clearly, on a concensus basis, and I cannot recall an exception to this, every one of those purchasers in response to questions by counsel on cross examination, and ultimately in response to questions by counsel on direct examination and in response to questions which the court asked, acknowledged that (1) they knew when they purchased the land that they were purchasing raw land which was not developed; (2) that they knew that the land they were purchasing did not have on it utilities at the time that they purchased it; (3) that they had an exchange rate and they understood the exchange rate; and (4) that they had a right to cancel and that they understood the conditions under which they had a right to cancel.

And with at least one witness, Mr. Guerra, and there were two or three witnesses last week when we focused on this particular problem, they all agreed that they had read before they signed the contract, at the time they signed the contract, that this agreement was the agreement and it could not be modified orally even by an agent of the seller.

Now, beyond that, a great majority of the purchaser witnesses, and when I say that I think it comes out to about 65 per cent of the purchaser witnesses who appeared here, went down and looked at the property they had purchased and they were able, I believe some of them testified to that effect, to measure what they saw, the actual physical property, the raw land in relationship to the developed property and in relationship to Albuquerque, the environments of their investment or their purchase, for whatever reason, but they were able to measure whether what they had been given, sold at a dinner was in fact what they had received.

And one after another, to my recollection, and I think my recollection is correct, stated that they were satisfied when they saw their property that their property had not been misrepresented to them at the dinners when they purchased their property and signed this contract. To be very specific, very simple, it was not a small-print contract.

And of course, as your Honor knows, the evidence is uniform that these purchaser witnesses signed the document at Rio Rancho saying "I have examined my property and I'm satisfied with it," and of course some of them bought more property.

The only witness I can recall, of the purchaser witnesses who testified, who said that when she went down to Rio Rancho she was disappointed, putting the raw land, putting the actual purchase up against what she had thought she was getting, the only person who said that, to my recollection, was Mrs. Henry. She was the second purchaser witness in the case. And even though she said it was arid desert or something of that sort -- and she then identified a couple of pictures, but put that aside -- the important thing is that she signed as to her satisfaction with the property and I think she bought more property.

Now, my position is a very simple one, in the first instance, and that is that I submit, your Honor, that where the evidence is conclusive on the government's case -- much less muddled, conclusive on the government's case -- that the purchasers got exactly what they bargained for in the contract, raw land, without utilities, with an exchange rate which was never dishonored, and where 65 per cent of those people went down, pursuant to their right, contractual right, looked at the property, measured what they saw against what the property had been represented to be, and expressed their satisfaction, that that's clear and overwhelming evidence not of mail fraud but of a bargain in which the purchasers got exactly what they bargained for.

And I don't know of any mail fraud case where a conviction has been sustained where the purchaser, or the alleged victim, received exactly what he had bargained for. In fact, I think the Regent Office Supply case indicates that a mail fraud case cannot be made out in those circumstances. In the Regent Office Supply case, at page 1180 the Court of Appeals characterized the government's theory of the prosecution as follows.

The government's theory ~ the prosecution was that "Fraud may exist in a commercial transaction even when the customer gets exactly what he expected at the price he expected to pay."

And of course the Regent Office Supply case reversed that conviction, threw it out and rejected that theory of the prosecution's case of mail fraud.

We think just on that basis this case has to be dismissed and a judgment of acquittal entered as to all defendants on the simple basis that the evidence establishes overwhelmingly, from the cream of the crop, and from the contracts themselves, that the purchasers in this case got precisely what they bargained for and were in fact given a chance to go down and look at what they bargained for and were satisfied they had gotten precisely what they had bargained for.

And I think that the right of inspection is very material. I would cite a case which I am not sure is in our memorandum which is cming, U.S. V. Rabinowitz, 327 Fed. 2d, page 62, where in reversing a mail fraud case, after a lengthy talk about what was sales representations and what were not, a lengthy discussion, the Court of Appeals for the Sixth Circuit, this was a sewing machine case, concluded:

"There was sales talk, yes. There were exaggerations." So the Court of Appeals found in reversing the conviction. "But they were made to people who had seen the machines and could presumably know their own capabilities. That boat salesmen and purchasers were mistaken as to this does not spell out an intent to deceive."

Cow, if your Honor please, the additional point is that these purchasers, having been given the right to go down, and most of them having exercised it, and were able to look at this land bears very heavily on the second element of mail fraud, one of the elements of mail fraud, which is the capacity to mislead.

It is just as if these people walked into the A&P with a sign that said "best potatoes in the world" and they said "Look, before you take these potatoes, cook them and eat them." And they cooked them and they ate them and they spit them out and felt they were terrible and yet they purchased the potatoes and walked out of the store.

I think the inspection right has got to be material in a determination as to whether there was a scheme or whether these people did not get the benefit of their bargain or certainly as to whether there was a capacity to mislead here.

You have to wonder really what businessmen would do when they say "Come on down and look at what we are selling you, and if you don't like it for any reason you can cancel it," that is now being charged as an act of fraud by the government.

(Continued on next page.)

Now, if your Honor please, I've gone through the pre-trial memorandum. It was alleged in there that they were going to prove that there was no intention of improving the lots.

The proof has been just to the opposite. The development has gone forward. Every exchange request has been honored.

They said they were going to prove that we were making false representations of agency approval. All of these offering statements contain the caption it was neither approved nor disapproved. They didn't prove that.

They said they were going to prove that we intended to limit the installation of utilities. But no evidence of that.

They said they were going to prove that there were not enough lots set aside for the exchange of each homesite sold. No evidence of that.

They said they were going to prove the advertising was revised in bad faith in fear of state and federal regulatory agencies. But no evidence of that.

There has been no evidence really of almost everything that they said they were going to prove pre-trial and, I think, in their indictment.

So we floundered around and said to ourselves, "Let's see; what is their theory?" And that's what I'm addressing myself to, to what I perceive to be their theory.

I say the government has found itself in a position where they know the bargain was kept but had wanted to bring this case and therefore have diverted it from the tangible aspects of the bargain, as to which there can be no complaint in this case, and the testimony of their own witnesses, to two intangible aspects on what I assume the government will claim to have been the bargain. Both are matters of opinion.

One was they say that these defendants sold this land as a "good investment." The second is that they say the defendants consistently represented -- the words changed over the course of the period, but in essence that -- Albuquerque was predestined or predetermined to grow to the northwest.

Now, two things to consider. First, both of those statements, whether something was a good investment and the direction of growth of Albuquerque, clearly are not statements of facts, they are projections or statements of opinion, and are not tangible aspects of the bargain. I think they must be considered in that light.

Now, on the question of good investment, we don't think the government should go to the jury on this case on the question of good investment for a number of reasons.

But a very basic one is that they have not offered any evidence to show that this land was worthless or even a bad investment. We think that is their duty. The land was not barren. The evidence shows that it was highly developable and that development has taken place and is proceeding and that you don't have to dynamite, as they do in Volcano Cliffs.

But the principal thing I point out is the government has not had the nerve to put someone on the stand to say "I've gone out, I've looked at that land, and in my judgment that land is worthless or that land is worth two cents or that land is worth five hundred dollars."

Where is appraisal? Where is the proof of what that land is worth? They have failed, and I think that is a gap in their proof.

Beyond that, if your Honor please, I think the evidence as a whole establishes that the land does have substantial value. Every witness has said it is a nice place to live and people who are living there love it. Every witness says that the land is subject to development. Their own quasi-experts said the land was subject to development, it was not waste land or swamp land or under water.

The only evidence they have offered that I can perceive -- I'm going to withdraw that statement.

The evidence which they have offered, and the only evidence which they have offered, which I think Ms. Hynes will argue proves the land was a bad investment is evidence that out of 45,000 homesite owners, approximately 690 sent their property down to Albuquerque for multiple listing in the Albuquerque area.

Now, their own expert on multiple listing, Ron Williams, shows multiple listing means nothing more than you fill out a card and you put it in the file. And that certainly is not evidence of even an attempt at resale, in my judgment, and certainly not evidence of a sufficient attempt to resell to go to the jury, even assuming that inability to resell within three, four or five or six years of your investment would be sufficient to stamp something as a bad investment or as worthless.

Moreover, from all that appears in the record, and perhaps from what doesn't appear in the record, those 690 people attempted to sell at prices competitive with AMREP while AMREP was still selling itself through a national sales campaign, and, moreover, twenty of them were able to sell it.

Moreover, the government's own proof three of the purchaser witnesses, their cream of the crop, I think about fifteen percent, three would represent about fifteen percent of the people they called, Mr. Mols doubled his money in a lot, Mrs. Bonavisa's husband had worked out a sale which would double their money in the lot and then the indictment broke, and Mrs. James, who had built a home down there, made about $14,000 on an investment of about $20,000. So fifteen percent of the very people they called, the cream of their crop, gained large profits.

Now other evidence. I think that only 690 out of 45,000 homesite owners even attempt to multiple list is some evidence that the rest of those people believe they have a good investment, and I think their judgment, having seen the land, is worth something.

No purchaser, and we asked Gusowsky, who was a complaining witness, and he is an accountant, we asked him, "Did you ever write it off? Did you ever take a tax deduction? Did you ever try to establish a capital loss?" He had not. Neither has any other purchaser.

The biggest fact, the two biggest facts, one

I have already mentioned, is the prosecution's own witnesses, Avellanet, Olguin and Carruthers and Pierce, every one of them testified that the value of land right up to the county line in the northwest and in the Corrales area had increased in value over the past ten years.

And, as I say, the prosecution did not even have the nerve to ask their own witnesses, "Do you believe that Rio Rancho land has increased in value? What do you perceive as the value of Rio Rancho's land?"

The prosecution did not have the nerve or was unable to produce an opinion witness, an appraiser, a person qualified to give that judgment, given all the resources and the lengthy investigation, someone to get on that stand and say this land is worthless, this land is even a bad investment, which I don't think is sufficient to go to the jury in any event.

So I say, if that is their theory, that these men and these companies engaged in a scheme to defraud by selling as a good investment land which they knew was not, was a bad investment, was worthless, then they failed just on the fact of the falsity.

They have not proved, as it is their burden to prove, that this land was a bad investment. They have not proved it was swamp land or worthless. All the evidence in this case tends to the contrary, and it certainly does not establish what they must establish, that there is proof beyond a reasonable doubt or proof from which reasonable men could find beyond a reasonable doubt that this was a worthless investment.

Now, one other thing, if I might add, your Honor.

In the Lattimore case the prosecution has not even defined,so far as I can tell, what a "good investment" is. Obviously this was a good investment to pass on to your children if they wanted to live in the south west. They have not really defined what a "good investment" means.

Now, I point to the Lattimore case. In that case Lattimore was convicted of perjury because I believe he had denied that he was "A follower of the Communist line."

And the Court of Appeals reversed that conviction, and I cannot find the quote offhand, but they reversed that conviction. Here it is, your Honor. Because they said "You couldn't understand what that meant. It was not sufficiently definite and concrete to allow a determination." And they said, in the quotation, that to send a case to a jury on that basis, to let them figure out jgjw 8

what "A follower of the Communist line is," would be asking the jury to aspire to levels of insight of which the ordinary person is incapable and upon which speculation, and that's what I think this case is, upon which speculation no criminal indictment should hinge.

ELjw 1

Now, if their theory is that these men and these corporations committed fraud over fifteen years because they sold as a good investment what they knew to be a bad investment, I say, if your Honor please, that they have to define what good investment is and they have to prove that this was not a good investment or was worthless, or certainly a bad investment.

I think they have failed on both, in fact, have shied on proof from both, either because it is not available to them or the people they have spoken to have not given them evidence which would help.

I think that failure of proof has to be held very strongly and seriously against the government, which has to make that allegation. To give this case to the jury, to let the jury say was this or wasn't this a good investment, with no proof is allowing the jury to speculate.

In this case there was evidence of salesmen's representations and where this jury could very well convict simply because they don't like the way, because people merchandise this improperly, in a way which is traditional in this country, whether we like it or not.

What I am saying of course is that the possibility of prejudice is extreme.

Now, the second thing, growth to the northwest.

ljw 2

Again it is an opinion, again it is a projection. I know that an opinion dishonestly held can be the basis of a fraud conviction. Mr. Arkin will address himself to that. But your Honor look at that evidence.

I really ask the Court, given the evidence that we have heard, the company said basically that Albuquerque was hemmed in on three sides. There is no question it is hemmed in on three sides. They said it was bursting at its seems.

The government's own overlay which shows that Albuquerque expanded its city limits about every other year, shows that it was bursting at its seams. So we are really down to this representation, however it was phrased over the course of the years, about a predestined direction of growth. That was the opinion.

The question is whether the government has established that that was false, without regard to, that was wrong, in error, inaccurate, clearly false, without regard to the question of good faith or bad faith.

Your Honor, I really submit, I don't think there can be any doubt that Albuquerque if it is going to grow, given the present situation and the past situation, if it is going to grow, has got to grow up the northwest. You got the mountains on the -- I am going to say it right--

eljw 3

THE COURT: The east.

MR. FLEMING: You have the mountains on the east, Carruthers testified that planning took no consideration of the south. There is an Indian reservation there, there is some land, a lot of it is owned by the state. It is also a poor neighborhood with a high crime rate and Mr. Carruthers said that city planning gave no attention to the south.

They talk about this land to the direct west, the Atrisco grand and the Pajarito grant. Carruthers testified that the majority, I think about 50,000 to 55,000 acres in the Atrisco grand had just entered into a quiet title litigation this year.

And I asked Carruthers, and this is their witness, would you want to bet on the outcome of that litigation, and Carruthers said he would not.

I asked him, isn't it true that the biggest growth is going to be up the north valley? And he said, no, because we are trying to control density in the north valley, we don't want to make it too dense.

And I said, how about the west mesa, and he said yes, the west mesa. There is no question about the mountains, the unavailability in the south, and the substantial legal problems and impediments to development in the west, the only place on that map where growth is free and open is directly towards Rio Rancho.

Now, with happened of course is that Albuquerque does not have six or 700,000 people in it at this time. But can there be any doubt, those projections were everybody's projections. The good faith of those representations is not contested in this casen. Can there be any doubt looking at that map, remembering the evidence, that if there was 600,000 people in Albuquerque today instead of a little over 300,000 people, that that northwest mesa would not be heavily populated. Is the land use map available, the 1964 land use map?

MS. HYNES: I don't know, where is it?

MR. KAUFMAN: What exhibit number?

MS. THOMPSON: 68.

MR. FLEMING: I will wait for it.

Putting that aside, what is the government's evidence on the falsity of that projection, of that opinion?

They called Carruthers, they called Pierce, they called Avellanet.

Carruthers made a projection in 1964, with regard to where all the people would be living in Albuquerque in 1985 based upon a projection of 820,000 people in Albuquerque at that time. And your Honor will recall the map which was a part of that report, and your Honor will recall that Carruthers' testimony as to where people would be living was based upon Carruthers' desire -- and he as much said it was his desire -- to increase and reverse historical density trends in the Albuquerque area.

He was going to double or triple density. He was gong to infill all the vacant land in Albuquerque, he was going to expand to the limit in the northeast, where there was land available for development, and having doubled or tripled density, infilled all the vacant land, and all the people would be there, and still on that land use chart there was a peninsula under his own projections and his own change of historical patterns, there still was a projection directly towards Rio Rancho.

If your Honor will recall, it was yellow and not dark brown, but that was based upon the density that Carruthers had projected. Carruthers himself admitted that he had been wrong. He admitted that in 1975, eleven years after he issued his first report calling for increased density, inner city fill, all for revenue purposes, he admitted in 1975 he had to issue a report asking for the same thing. And he admitted as a matter of fact, that density, whether on gross acreage or developed acreage based over the last eleven years, rather than increasing as he had wanted, doubling or tripling, had in fact decreased.

That Albuquerque's traditional pattern of growth and sprawl had continued. If your Honor please, that is their evidence. Avellanet's testimony was based on exactly the same thing. Let me turn very briefly to Avellanet's testimony.

The Avellanet report, or the Henninger report, whatever it is called, is the government's, I submit, only evidence of falsity, as least brought home to these defendants. But it is a basic piece of evidence in this case, and it is shot full of holes and was shot full of holes just as Carruthers' opinion was shot full of holes.

Avellanet said he didn't take the 820,000 projection. He said it was more reasonable to expect 815,000 people in Albuquerque by 1985, and he said there was room for 365,000 persons in the northeast and southeast quadrants.

And therefore, he said, since there were going to be 615,000 people there by 1985, they would all be in the northeast or the southeast and none of them would be in Rio Rancho.

He said, and your recall how -- I don't know exactly how he found it out, but he gave the opinion that there were forty-two square miles of unused land in the northeast quadrant and six miles in the southeast quadrant, a totel of forty-eight square miles of available, developable land, back about 1966 in the northeast and the southeast. And then he made the same assumption that Carruthers had made. He wanted to change traditional density.

He said assuming a modest development density of three dwelling units per acre, and Albuquerque's 1960 average of 3.6 residents per dwelling, space exists for 365,000 persons in these supposed forty-eight square miles.

So Avellanet assumed a future density of 10.8 percent per gross acre. Traditionally, the density at that time was 5.8 persons per gross acre. So he wanted to double that.

The evidence is it has not doubled, it's decreased so now it is about 4.8 percent per gross acre. If Avellanet had taken, which was certainly a logical thing to do, if he had taken existing density and applied it to his forty-eight square miles, his forty-eight square miles could have accommodated only 160,000 people and even on his own projections of forty-eight square miles, there had been an overflow of 140,000 people by 1985, and that is even assuming his lower conservative population estimates.

There [illegible] no question where they would have gone. There is no question of the good faith opinion of where they would have gone. Further, Avellanet having talked about 48 square miles was confronted with cross examination, I think the record discloses that he got down to the point where he was about 20 square miles which he could actually identify, he had sort of ridden around town.

If your Honor please -- and then I asked him to do it by rule and he came in and said he couldn't do it. If we assumed, got in the middle there and assumed that there were 30 miles developable property in the northeast, then that traditional density would have housed less than 100,000 people. And that would have been filled by 1972 at Avellanet's projection.

What is the point of all this? The point of all this is the government is under an obligation to prove that these defendants' prediction and opinion that Albuquerque's growth was predestined to go to the northwest was false, and they have the burden of proving that before you go any further in this case.

And they put on witnesses, Pierce, Carruthers and Avellanet, who did say that there was available land in the northeast and we don't challenge that.

But who even on the heaviest density projections, Carruthers, did show that by 1985 based upon population increase, which everyone was expecting, there would be a peninsula going right towards Rio Rancho and did say that his own projections of where people would be living in Albuquerque were based upon his desire to infill vacant land, which he was unable to do, and his desire to double or triple density, which he had to admit he was unable to do.

Where is the hard solid evidence that the opinion that Rio Rancho -- I am sorry, that the opinion that Albuquerque was predestined to grow to the northwest was a false opinion? You can argue about it, but we think we get the better of the argument, and that is on the government's case.

And I say again, if your Honor please, you look at the evidence, you look at that map, Albuquerque is hemmed in, the only place where that city can grow if it is going to grow, and certainly these people can't be sent to jail because they hit a zero population growth in the 1970's, if Albuquerque grows it's got to grow to the northwest and I think that is as clear as anything in this case.

What the government wants to say is well, maybe that is true -- they probably wouldn't even go that far -- maybe that is true, but if we solve the Atrisco grant legal problem which now eleven years after the event are just going into litigation, where Carruthers would not bet on the outcome, if we solve that, there is a lot of land in the west.

If we solve the problems with North Albuquerque Acres, there is some land there. Beyond that, there is some developable land in the northeast. If they are saying that, they would be saying these people would be in no trouble if they said Albuquerque is predestined to grow to the northwest, there is some acreage in the northwest which has not reached capacity. I don't think there is a fraud, if your Honor please, on the question of falsity.

Essentially, that is out. Our memorandum will follow, if your Honor please. I can argue connection now or turn to Mr. Arkin and let him argue good faith, and then follow connection with the individual defendants.

THE COURT: Maybe we ought to hear Mr. Arkin.

MR. ARKIN: Your Honor, with respect to the product which the defendants sold, the contractual agreement entered into by the company and each of the purchasers, I think there can be no question, and this bears upon the question oi good faith, to my mind, that the evidence is monolithic without fracture that every bargain made, these people kept.

The government cannot say, in my mind cannot bear to say, that what these people promised they did not fulfill. Tangibly, as Mr. Fleming makes the distinction. We are left with certain intangibles, which essentially, as I, Mr. Fleming and others struggle to perceive the government's theory, appear to be that the company sold land at Rio Rancho as a good investment, and that the company sold land at Rio Rancho on the representation that Albuquerque was going to grow in the direction of Rio Rancho, that is, to the northwest, in the northwest quadrant of Albuquerque.

In any criminal fraud case, I'm sure your Honor knows far better than I, there has got to be evidence of whatever representations are made, are made with knowledge of their facility, with the intent to defraud, made in bad faith, that the representations must be something brought home to the brain and minds of the defendant as being false, or, in the case of opinions, as are at issue in this particular case, the burden is perhaps more difficult, Harsher, to show that these opinions were not honestly entertained, to show beyond a reasonable doubt, if you will, that these people could not have entertained these opinions.

I say could not because I believe the government must concede absolutely that there is no direct evidence in this case that anybody, any defendant, be it company or individual, did not honestly believe the representations being made or had knowledge of falsity.

There is not a scintilla of evidence in the government's case that these people had knowledge of any falsity, if there were such falsity.

And I must say I am very persuaded by Mr. Fleming that there is no falsity. Nor is there any evidence that these people did not honestly entertain these opinions.

Now, to overcome this the government has structured a case, or at least presented a case which as I try to perceive it, is that these basic representations must have been so obviously wrong, so obviously inaccurate that anybody must have known about them.

And they go on with some refinements on that basic theory, which I will discuss in just a moment, such as being a corporate officer injects one with special responsibilities.

But essentially the government relies on the representations themselves as circumstances from which the government seeks to infer knowledge of falsity.

As I perceive it again, the basic idea is that these opinions were so obviously false, obviously inaccurate, they must have known. But the evidence in this case is that the opinions were not obviously false; that at the very least there is an argument, as Mr. Fleming puts it, we have the better side of the argument. I agree with that.

But even if we didn't have the better side of the argument, from cross examination of the three basic government witnesses on the issues of say growth to the northwest -- and I will discuss that more in a moment -- you can perceive that it is not so clear, it is certainly not clear to an absolute standard, or clear almost absolutely, or one where universal opinion is in accord that Albuquerque is not going to go to the northwest.

Similarly, with respect to the good investment, whatever that may mean, whatever definition you may give to it, anybody may give to it, and that is not very clear, that is very vague, and I don't see how you can charge or hold to a criminal standard individuals or a corporation for making a representation of good investment without there being some kind of definition within the indictment, within the context of the case as to what that is supposed to mean and why, therefore, it is false.

But where you have opinions such as these, which I believe lack accord in the government case, since the people did not get what they bargained for, at least tangibly, it is our opinion that you can't infer from that knowledge of falsity.

It is not certain, not absolutely, where you have something which is not incontrovertible, how can you say that this controvertible situation, controvertible opinion or fact is something, whoever may have the better side of that controversy, which supports an inference of knowledge in the brains of any individual or corporation?

Our brief is going to deal with that in terms of the case law. I'm not going to burden your Honor, unless your Honor wishes a discussion of our cases on that point. It just seems to me a clear and emphatic rational rule of law that you cannot say that where there is a controvertible fact, that from that fact alone, controvertible as it is, that you can infer knowledge of one side or another of that controversy. Certainly not in that case.

This good investment portion of the government's case to my mind has never been defined with any kind of precision, certainly not one which I find comfortable in the context of a criminal case, is the most obvious kind of opinion.

Good investment. People use that, it means lots of things. It may mean an alternative way of living style in the future, it may mean something to pass on to your children, may mean a place to live. May mean just outstanding land.

In any event, the good investment aspect of this case is long term investment, it is a projection for the future, it is not one of existing fact. There is no one witness here, no one piece of evidence from which anybody can suggest that the defendants here said that this piece of land that you are buying is worth more now today than you are paying for it. That is not what this case is about.

It's a long term investment, where people are being told, taking the government's case at its best, as I must on this motion, that it is a good thing for the future; good investment for the future. Again, whatever that may mean.

On the issue which I am dealing with, which is whether my clients and others, the corporations, believed it was not a good investment, believed the land was worthless, valueless, that they were selling a swindle to people, I say there is no evidence to show that they had this belief that they were diddling somebody, that they were selling something as a bad investment -- rather as a good investment when it was a bad investment.

All the evidence is to the contrary, briefly recited. These people for fifteen solid years in Rio Rancho stayed there, didn't cut and run. Millions of dollars every year invested in the very land which they were selling. Every year greater development, so that we get to the point where we have millions and millions of dollars invested.

The headquarters of the company is right there. And then on the issue of good faith, that is their state of mind in respect to whether they were selling something which was a swindle, a bad investment, every possible obligation set forth in the contract was fulfilled.

The exchange, cancellation privileges, the point is that when you survey the evidence, even on a motion such as this, there is nothing from which you can infer the kind of state of mind that they must have known it was a bad investment.

It would appear, and what Ms. Hynes is trying to do here is to equate or define good investment in a very limited, restricted, constrained, strained way, which is that good investment is the equivalent or to be defined by the ability to immediately or readily resell your land in the Albuquerque multi-listing market for a sizeable profit. That is a very limited definition of good investment. Very limited definition of "This is a good thing to own," which is in substance what the defendants are said to have represented over the years.

Your Honor has recognized that. That is not the only definition of good investment. Real Estate is by its very nature not something you buy and sell like stocks or poker chips. People who buy the land are not going to argue caveat emptor. People who buy the land must be assumed to have a certain amount of common sense, earthly understanding of what the world is about.

Land is not something which is immediately liquid. Nobody could have believed that the best sold on that basis, and it was not sold on that basis, and the company forbade -- and that is clear on the record -- its salesmen from saying that you could sell it right away, two days, that you could make money overnight.

The record also is clear and unequivocal: The company, from 1969 at least, to the relevant date here in its offering statement which every purchaser is required to get, said there is no ready resale market. The company is competing with you, and land is speculative. But again, however you define good investment, and I say there is a problem of perhaps constitutional dimensions in holding to a criminal standard upon some special, strained gerrymandered definition of good investment, however you define it, there is nothing bringing home to these people or even the corporations their feeling, their knowledge, their belief that it was not good.

The fact that some people wrote to the corporation and said they had difficulty in reselling or the fact that in Albuquerque there weren't a lot of pieces of property being sold or that more were listed than were actually sold, to my mind proves nothing.

In sum, this is an opinion. It is an opinion which is not susceptible to some certain proof, any certain proof. That it is false, that it is irrational, that it is wrong. It is not an opinion which today, in 1976, after two months of trial and three years of preparation, has been proven false.

On the government's own case indeed I say there is substantial evidence that even taking the very limited, strained interpretation of "good investment," that we have a good side of the argument too.

But again, how can you from this set of circumstances here infer that these people believed they were swindled, that they were selling something that was worthless? Not in these circumstances, I say.

And I say that the condition, this small special clubby sector of the Albuquerque market, the multi-listing service, what happened there, that is irrelevant. Growth of the northwest, which I think your Honor termed at one time, labeled as issue numero uno, it is an opinion, it is a projection. It is a representation which was made over the years in many different phrasings.

It is made, it is a logical pattern. Essentially, though, when you look at all the representations together, what defendants were saying in their literature, in their films, was that Albuquerque because of the topographical and legal restraints on three sides, and because it is a rapidly expanding community, is going to be to the northwest.

It is a future projection, it is an opinion. Various times it is made in stronger terms than other times, but generally it was made in the sense of, it's going to go to the northwest because of these various constraints and there were maps and things such as that.

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When you analyze the testimony, again, upon the issue, as Mr. Fleming did, of whether that was false or not, I say the very least is a matter of law that you must determine, you must decide is that there is a controversy on that. You have Mr. Carruthers on direct examination saying no, you could put a whole new Albuquerque within the present boundaries and it's not going to go to the northwest. On cross examination, under probing eliminates 94 per cent of the available land in Albuquerque or whatever it is, and he admits the density projections which he utilized were wishful ones and not ones which historically were accurate. Mr. Pierce the same way.

THE COURT: Pardon me, Mr. Arkin. You are going off in an awful lot of territory of Mr. Fleming. You are wasting time. I think you ought to take on the good faith. Mr. Fleming has argued the falsity situation. It's 12:30 and I'm sure you want to argue about your individual defendants.

MR. ARKIN: What I am saying is this: That the issue of growth to the northwest is such that it's not incontrovertible and therefore you cannot infer a state of mind, that is, of falsity, from something which is not controvertibly false. I will move on.

The only piece of evidence in the case which in possibly to one or more of the defendants -- I'm not going to concede that, your Honor, but for the sake of argument, which may be said to bring home knowledge of a contrary opinion to one or more of them is the Avellanet report. That is the Harman, O'Donnell & Henninger report. That is the document which Mr. Avellanet testified about, and said after his feuds in Albuquerque, ten hours or whatever, he concluded that there were 46 or 48 square miles of developable land in the northeast quadrant and that further, if you were to change projections of population density you could put a certain number of more people in that area. Certainly that appears within the report.

But that particular report, that portion of the report I say, it may not have been brought home to a lot of people, but more than that, it's an opinion. And there is no showing here that that opinion, that that study, if you will, which was concededly a rough cut, rapid, shallow study by one man, is gospel, is accurate, is something which certainly is exemplary of useful scientific opinion that there will be no growth in the northwest.

That being so, how can one say that that particular report implants in the minds of the individuals of the corporation that degree of knowledge which is tantamount to criminal knowledge that the opinion is false or tantamount to a finding or to sustain a finding that you don't honestly hold thatopinion? It can't be. The report is not scientific, it contains its own projections which admittedly is based on a shallow, incomplete study.

And again the representation that was made speaks of the future; that is, it will go to the northwest. And even taking Mr. Avellanet's report at face value, which I would say would be folly, it's not inconsistent with the projection of growth to the northwest. There is no evidence, in sum, that the defendants or any of them ever agreed with him on that issue, if they were aware of what he said in that particular part of the report, and that they did not reject it.

And again within the body of that report, the references to other exhibits in evidence right now, the 1985 land use study, the Wilbur Smith transportation study, all of which can support, I say to your Honor, a very substantial workable hypothesis of truth in terms of the growth to the northwest.

So that document cannot in any way be said to provide the necessary linkage of knowledge of falsity, especially when falsity has not been proven in an incontrovertible, non-debatable way.

The government suggests in its pretrial brief that somehow being a corporate officer, that -- be it Howard Friedman, my client, who is president, or Henry Hoffman, my firm's client, who was a director, a consultant, and the others who Mr. Fleming will speak to, somehow by virtue of their position they had some kind of duty to inquire, to investigate, an expression which I'm sure your Honor knows, here nor commonly in those cases brought against professionals like accountants and lawyers, brought against certification.

In every case cited here, and our brief will cite them to your Honor, and your Honor will decide, shows that in only a very limited number of cases where the capacities of the officers or the individuals are fiduciary, does anybody have an obligation of going out and inquiring, that is an affirmative obligation of going forward to insure the accuracy of something which was said, particularly in a criminal case.

I say in this case these people were not fiduciaries. They had no fiducial relationship to their customers, other than anybody else has, and that is to inquire. Even if they had gone out to the field with topographers and experts and planners, they would have come up with a workable hypothesis to the government's own evidence to sustain the validity of the representations the company was making over the years.

Again I must say to your Honor that AMREP Corporation is not like a local candy store which happens to be incorporated with the sole employee being the sole owner and therefore an alter-ego. It's a large corporation, the people had many responsibilities, and to lay at the foot of any particular individual here the obligation of being an insurer or for the precise accuracy of advertising in the context of this case I say is wrong as a matter of law.

Again, the government argues that the facts which it claims were false were so obvious, I mentioned this before, that somehow they must have known that they were false. I say they are not so obvious. You can't get knowledge that way. It's a boot-strapping argument with no straps. And there is no proof these people did anything to put their heads on the stand or be willfully blind.

I hope to get our brief up to you later today. The basic point is thatyou can infer the knowledge of the falsity from the kind of facts you have here because they are incontrovertible and there is no other evidence. I don't see how it comes anywhere near a fraud case.

With respect to my individual client, let me briefly speak to them. Howard Friedman was president of the company, as your Honor knows. And he was concerned, as the evidence shows, mainly with the financial aspect of the company; to be sure, he attended some dinners, including one which was a testimonial dinner for Howard Friedman, and he had knowledge of the price rise over the years, how the company was financed. He made a couple of speeches to securities analysts, but again, I don't think this kind of status brings him to any falsity, if there is any, which I suggest to your Honor there is not, his status was as a businessman, and he conducted business, and there is no evidence he conducted any way other than honestly. And there is nothing which connects him up anything in this case.

There were isolated representations some of which we heard from salesmen from time to time which we might not like, but none of those was shown to be part of the scheme. Where you have hundreds of salesmen and one of them goes off on a toot, I don't think you can stick the president of the company with that salesman's toot.

Mr. Hoffman was, again on the evidence, served in advertising early on. He later as the years went on, in the late '60's, pulled back, went into other creative enterprises, was a director, a consultant, if you will.

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But again, there is nothing in the evidence to show that he had the opinion or the belief that what the company was doing in terms of representations was dishonest. There is nothing to connect him up to any provable false representation. Not one bit of evidence.

That, your Honor, essentially is why we believe the government has not met its burden on this motion, and it cannot withstand the motion.

MR. FLEMING: Very briefly with regard to the individual defendants Carity and Dan Friedman, Mr. Arkin has spoken about the salesmen's representations, what is necessary to connect those to any individual defendant. We have briefed that fully in a footnote to I believe it will be point 3 of the brief which your Honor will be receiving.

So I address myself again to what we perceive to be the only two claims the government is making here. One is that these defendants sold this land as a good investment knowing it was a bad investment. With regard to the individual defendant, the only evidence the government has offered to prove that this was a bad investment, putting aside these questions of bad investment, the evidence of inability to resell in the Albuquerque multiple listing market, I guess at auction. There is no evidence that

I am aware of that connects either Chester Carity or Daniel Friedman with knowledge of the resale question or of the auction.

And, therefore, even assuming knowledge of the representation that it was a good investment, I think the connection there is minimal, it's a question of distribution of literature, putting that aside, even on the question of knowledge, representation was being made that the land was a very good investment, there is no evidence connecting Carity or Daniel Friedman with the evidence which the government offers to show that that was a bad faith representation.

Therefore, to my mind they cannot be connected criminally with that representation, however your Honor rules on the representation.

With regard to the growth of the northwest, Carity is connected to the Avellanet report. I don't believe that the Avellanet report, which is the evidence basically -- which is the only connected evidence which they offer to show bad faith or falsity in the northwest representation, as I have argued, I don't believe the Avellanet report is so conclusive as to lend itself to that kind of determination and the cross examination basically fails -- in my opinion makes the other opinion more rational. Daniel Friedman was not connected to the report, so there is no evidence in this record which connects Daniel Friedman with any of the evidence which the government has offered reportedly to establish falsity and bad faith on the northwest representation.

So, with regard to the only two arguments we see them making, good investment and growth of the northwest, there is no evidence connecting Daniel Friedman to that evidence which the government claims establishes falsity or bad faith or both in connection with two representations.

So, I think whatever your Honor makes of the representations Dan Friedman has to go; that is, the case against him must be dismissed and judgment of acquittal entered.

With regard to Mr. Carity, there is no connection with what the government claims to be evidence of bad investment, so he cannot be connected with that allegation, if that is their case. He is connected with the Avellanet report, if your Honor finds that sufficient to establish falsity and bad faith prima facie, Mr. Carity is connected on that issue, but not the other, because I argue it is not sufficient.

One point finally. There is a great danger in this case and I think it is perceived by everyone in this case, that the jury could return a verdict of guilty simply because it did not, for example, like some of the sales techniques at the dinners to which these victim purchasers testified, assuming the jury accepts their representations. Sales techniques are not criminal, I think that is clear.

There is a danger that the jury could convict on this basis. If those techniques had been connected to these individual defendants, I assume it could be argued that the sales techniques connected with these individual defendants would evidence their state of mind or intent with regard to whatever actionable representations your Honor would find if any actual representation existed.

We of course do not think any exist. They have not been connected, and because they have not been connected, I believe that that testimony must be struck and alternative to a judgment of acquittal, which I really believe has to be entered in this case on these facts, they just haven't proved their case or come close to proving their case, but it seems to me a mistrial has to be declared because of the consistent use of unconnected sales representation, which give rise I think to the possibility that if this case goes to the jury, of personal bias rather than the law.

THE COURT: Mr. Lavinsky.

MR. LAVINSKY: If your Honor please, I basically am going to rely on the statements made by Mr. Fleming and Mr. Arkin. I believe that they fully support the motion for the corporation AMREP for acquittal. I also am going to submit to your Honor this evening if at all possible, and tomorrow morning at the latest --

THE COURT: I told you a week ago that tonight was the night. I have to do this, and I'm not going to stay here Saturday and Sunday to do it.

MR. LAVINSKY: Your Honor, this is not in connection with the motion to dismiss. The brief on the motion to dismiss will be forthcoming this afternoon. This is similarly an itemization of allegations in the indictment which we believe there has been a failure of proof on.

THE COURT: You can submit that this afternoon also. I am going to do it tonight. I am not going to stay around here Friday and Saturday to catch up on your briefs.

MR. LAVINSKY: We will try to do that, your Honor.

THE COURT: Tonight.

MR. LAVINSKY: We will try to do that, your

Honor.

THE COURT: All right.

Mr. Weidner.

MR. WEIDNER: May it please the court, we move for a judgment of acquittal as to Mr. Friend and alternatively for a severance as to him if the judgment for acquittal is not entered. Mr. Friend of course is in a different circumstance from all of the other defendants here.

As the evidence shows, he did not become employed by AMREP as its general counsel and vice president until February, 1970. By that time, of course, the land business had been going for nearly nine years. The majority of land that Rio Rancho had purchased, it had been subdivided. The contracts had been written, promotional materials written, submitted and filed with the State.

In short, all was in place. The proportion of evidence in this case is illustrative of the weakness of the government's case against Mr. Friend, and shows how little he had to do with the scheme that is alleged. Of nearly 400 exhibits, approximately 15 and in addition to that, the board minutes that came in this morning, concern Friend. Of some 46 witnesses, four mentioned Friend. Of those, three had virtually nothing to say about him.

I think Mandel testified that Friend was with the company when he, Mandel, left it. Zaknich said that Friend had been brought in as general counsel and later as vice president, and that he had seen Friend possibly once or twice at Rio Rancho. And Potter similarly said that Friend occasionally dropped in and out of sales meetings. Perlmutter also testified slightly about Mr. Friend and more of that later.

But in effect, it's not more probative of the government's case than the other witnesses. The government of course also read into evidence, and this is the only other evidence directly concerning Mr. Friend, his grand jury testimony. That portion of the testimony that was read in constitutes approximately 20 out of 1200 pages, which were carefully culled, snipped, and then read into the record by the government.

I believe a review of the evidence shows unquestionably not only that the government has not shown that a reasonable man could conclude beyond a reasonable doubt that he was guilty of any alleged crime, but in fact this case may be unique because I think the government on its case has established clearly his innocence.

I will not at this point review whether or not a "scheme" has been established. I think both Mr.

Fleming and Mr. Arkin covered that adequately. The question here is whether Mr. Friend joined in the scheme if in fact there was a scheme after he joined the company in 1970.

In this regard, I think it's helpful to review the evidence relating to what I perceive to be at least the government's main effort to prove a scheme. Certainly a major issue, if not the major issue relates to allegations or representations concerning growth to the northwest. The indictment alleges, the government has emphasized in its opening and through witnesses, that it claims the representation that Albuquerque could only grow to the northwest was false. And it is primary evidence, I assume it will argue, and that the defendants knew of this alleged falsity, as the Henninger or Avellanet report.

But in fact there is nothing in the record to connect Mr. Friend with that report whatsoever. In fact, your Honor may recall that Mr. Friend testified in the grand jury that he never heard of the report until October, 1974, when it, along with thousands of other documents, passed through him in the course of grand jury production.

In short, that evidence provides no probative force at all as to Mr. Friend concerning any alleged knowledge of falsity, if falsity there was as to growth direction. Furthermore, there is nothing in the evidence that indicates Mr. Friend should have in the least bit suspected, that if it were even relevant, that the representation was false. The government has offered into evidence the city land planning commission report in 1964; the 1985 land use plan.

Here again, there is no connection with Mr. Friend to it. But more importantly, I think it's relevant to point out that one of the Government's Exhibits shows that Mr. Friend asked to see the Rio Rancho films that were in use in late 1971. One of those films was "The West Side Story." In The West Side Story, as your Honor may recall, Mr. Vaughn, a member of the city planning commission, appeared. And Vaughn said in part, and I am quoting, "As a city planning commissioner and a resident of the west side, I am optimistic about Albuquerque's growth and I feel very strongly that a key to Albuquerque's future lies in the development of the west side."

Not only, I think, does that cast substantial doubt on the government's entire theory, but certainly as to Friend, it gives him a reason to believe that any representations that had been in the literature for years, that had been filed with the state, were concerning the growth of the northwest in any sense false.

Furthermore, I may point out that the brochure, "This is My Land," which the government has repeatedly shown to the jury, was brought to Mr. Friend for the first time in March, 1972, and the evidence establishes this. He was asked to review some changes that other members in the legal department had proposed, it was brought to him by a person in the advertising department. And the changes which had been proposed on page 8 eliminated the reference to Albuquerque growing only to the northwest, and other language was put in, was proposed in place of it.

And, a comparison of Government's Exhibits 38 and 39 clearly shows that change. The point being that the first and only direct connection of Friend to this allegation is at a time when the very allegation, representation, that is, that the government claims was false, was being eliminated from the literature.

In sum, as to the growth of direction of Albuquerque, there is no connection of Friend with a so-called Henninger report, there is no connection with the evidence to show that he knew it was false. In fact, if there is no evidence on it at all, it shows to the contrary.

A related matter similarly shows Mr. Friend's innocence, certainly not his guilt. That concerns comparable land prices at Rio Rancho. Virtually every victim witness that took the stand was asked about page 9 of "This is My Land." And that, your Honor will recall, is the page which lists various examples of land transactions in Albuquerque and per cent of profit, et cetera.

However, what the government did not do at any time was read to the jury or even show them the version of "This is My Land," page 9 of "This is My Land," that came into use in May, 1972, and Mr. Perlmutter testified to that, after Mr. Friend had reviewed it in March, 1972, again in the context of giving his legal opinion as to changes that were proposed.

I think it's instructive to see exactly how page 9 was changed at that time. First of all, a number of examples were eliminated and reference to the percentage of profit were taken out. But more importantly and I think critically in this case, the following language was inserted, if I may read briefly, "Obviously no one can predict the future with any certainty, and no one can accurately forecast how population, inflation, and other factors may affect the price of land. All we can do is look at what has happened in the past. Accordingly, we are presenting here some selected examples of land price increases in different sections of the Albuquerque area. Each one shows transactions tracing the increases in price on various pieces of property over the years.

"These are strictly factual records and do not in any way represent or imply a promise or prediction of future land values or prices which of course depend on location, rate of development, marketability, population growth, plus other factors."

I submit, the fact that that disclaimer was put into that brochure at the time Mr. Friend reviewed it disspells any notion of his alleged guilt in representing to the customers that these were comparable land prices that guaranteed that this is what was going to happen to Rio Rancho.

In fact, if anything, it proves the good faith in not misrepresenting anything in a scheme, if there was any scheme at all. I think the government recognizes that change, as is manifest in the fact that they never showed it to the jury, or the fact that its predecessor, 388, was shown to the jury time and time again during the trial.

Far from showing that Friend closed his eyes, this transaction proves conclusively that he did just the opposite. If anything, his eyes were wide open and he was giving careful legal advice to his client. Certainly proves no guilt on his part.

The next general subject matter I think appropriately could be treated relates to sales practices. Here again I think it's important to reiterate that the mailing sales program that one time went on at Rio Rancho occurred in 1961 to 1965, done in 1965, five years before Friend was there. Obviously he wasn't involved in that. The dinner party concept was created in '65 and I think the evidence shows that the sales techniques, approach, whatever, to the extent that they were relevant were developed shortly thereafter.

In short, they were in place when Friend got there. So again the question is, what evidence is there that shows that he joined in any scheme in this regard, if there was a scheme? In fact, I submit there is none. There is no evidence, for example, that he ever attended a sales dinner, and as your Honor noted earlier on in the trial, you can't infer a duty for the general counsel of the corporation to attend those dinners.

In fact, I think the government at one time said, in offering Friend's grand jury testimony where he said he hadn't been to those dinners, that that statement was a false exculpatory statement. Where is the proof of that in this trial? There has not been one piece of proof that that testimony was false, and the reason is that it wasn't false.

However, the government's representation in that regard, I suggest confirms the bankruptch of its case against Friend. Furthermore, as to sales practices, the record affirmatively shows that he had nothing to do with making any sales policy. Perlmutter and others testified as to what defendant did make sales policy. Friend wasn't involved in that regard.

Furthermore, Friend wasn't in any of the isolation meetings which were also the subject, I believe, of Mr. Perlmutter's testimony where sales questions were involved. He wasn't at the area sales directors meetings where sales were discussed, except that he came in from time to time and spoke on such subjects as recision notices and distribution of property reports. In the latter report, that is distribution of property reports and the legal requirements for it, the record is absolutely clear that Friend had nothing to do with any scheme if there was one, to hide property reports, put them under sugar bowls or anything of the sort.

The testimony of Mr. Perlmutter is that he was adamant that the reports were to be legally distributed as required.

Furthermore, it was company policy, andFriend was told of that, and I'll get to that in just a moment, to have the reports distributed, as required by law. In fact, I might note that beginning in March, 1972, AMREP, and this is before the law required it, put into effect a procedure whereby a customer had to sign a receipt for the offering statement so that there could be no question that one was given and received at the time.

Ultimately both the state and federal government put such a regulation into effect. But in this case, the legal requirement was at AMREP before the government required it.

In short, there is no proof that Friend participated in any sense in any kind of a scheme, and I'm not sure there is a scheme here at all, in fact I am sure there is not, concerning sales practice. They were there when he got there, and to the extent that there is any connection with him to those sales practices at all it shows he was trying, as a conservative lawyer, to make sure things were done correctly.

Another general subject matter which both Fleming and Arkin touched on, and I think I should, too, relates to liquidity in resale, representations, allegedly false, that there was a liquidity and easy resale as to

Rio Rancho property.

Here again there is simply no evidence that Friend participated in any scheme at all in this regard. In fact, the evidence proves to the contrary.

It was company policy, and the record shows it continuously, and I think it is fair to assume that Friend knew it, that property reports and offering statements were to be distributed to customers. In fact, he was adamant that it was to be done.

As to resalability and liquidity representations, I think it should be remembered that the offering statement given to those customers specifically stated the following at the end, and if it is not exactly the same language, it is similar throughout the time Friend was with AMREP, and this is Government's Exhibit 792. That offering statement says:

"Lots may also be purchased for speculative purposes. But such purchasers are advised that resale for a profit may be difficult for a number of years in view of the fact that water and utilities may not be available to certain lots for an indefinite number of years, that a percentage of the purchase price is included therein for use in advertising and development, and that in trying to make a resale the purchasers may be competing with a company which has thousands of lots to sell."

Now, given that specific statement, it is difficult for me to see how the government can claim that Friend nevertheless was Aarticipating in a scheme to mislead customers into believing they could go out and resell their property immediately for a profit, which in effect is, I gather, what they are charging.

Further evidence also establishes that Friend didn't participate in any such scheme. In fact, to the extent there is any evidence at all relating to Friend in this case, it proves exactly the contrary.

I think it is relevant to start here with a memorandum which Perlmutter testified that he had sent to Friend in January, 1971. This is not long after Friend joined the company, and that is Defendants' Exhibit CY.

Among other things, Perlmutter said in that memorandum:

"The following procedures are in effect at both development conferences."

Paragraph 2: "A memo was sent out several weeks ago to all officers restating that we do not have a resale policy and instructing all salesmen that this should not be in their sales pitch."

It is reasonable to infer, since Perlmutter was jqjb

not a subordinate of Friend in the legal department, that Friend must have asked something about this and was told "We don't have such a policy." And certainly, given that evidence, you can't turn it around to say that Friend was nevertheless participating in a scheme where that was the policy of the company, that is, the policy to sell for resale."

This appears again in a memorandum the circumstances relating to a memorandum a year later, in February, 1972. This was Government's Exhibit 1405. Your Honor will recall that Perlmutter testified that Friend had circulated a memorandum, a brochure from competitors within the company concerning sales practices which that company prohibited. And in a meeting with Friend and Daniel Friedman shortly thereafter, Perlmutter was instructed to send out a similar memorandum for AMREP.

That memorandum dated February 29, 1972, Government's Exhibit 1405, specifically stated to all area directors, all area sales directors:

"There are certain statements that are forbidden, and if by chance any salesman should make such a statement he should be terminated immediately."

And the forbidden statement included, for example: "You don't need a federal property report," or

"This is a quick return on investment," or "We will resell your property at any time."

Again, the evidence was specifically to the contrary, the evidence as to what Friend knew and was told, of what the government now claims he participated in.

The evidence doesn't stop there. I think it is also relevant to look at his review of the script for "Your Golden Future." And this is part of his grand jury testimony and is reflected in Government's Exhibit 341, which is the script that Friend reviewed on March 7, 1972, with his handwritten revisions on it.

A review of that script shows that Friend struck out a number of things, and we'll cover this in our brief, so there is no point in covering them all here, but references such as "Land values at Albuquerque had doubled again and again," or that "There is a land boom in Albuquerque," or that "Land can only increase in value."

In fact, the revisions show that Friend suggested eliminating the entire conclusion of the script, which was investment related, or changing it to a theme which would relate to "Living at Rio is a better way of life."

Now, again, I don't see how, in view of that contamporaneous specific written evidence, the government can claim nevertheless that Friend either was participating in a scheme to mislead purchasers into thinking this was a good, liquid, resellable piece of land or that he was closing his eyes to such representations being made.

What the evidence shows is that this is a lawyer reviewing a script given to him, making his recommendations for changes, and those changes relate right to the heart of the government's case here. Again, it proves his innocense, certainly not any kind of guilt.

Also look to November, 1972, and this is also part of Friend's grand jury testimony when he met Miller, who was the head of ATC, on a plane trip. Friend testified, of course, that he did review sales scripts for ATC presentations, that he did review with Miller on that plane trip what Miller's sales presentations could or could not maintain.

And Friend made absolutely clear, as his grand jury testimony shows, that there could not be any direct or indirect reference in the sales presentations or dinners to monetary rewards, to getting rich quick, or anything like that.

Thus we see, beginning in January, 1971, continuing right through the end of 1972, a consistent pattern of events, and these are the only events that relate to

Friend in this regard, of Friend suggesting modifications, suggesting that things be eliminated, or getting confirmations that misrepresentations were not in fact being made as he had directed on numerious occasions. It proves no participation in any scheme.

I should also note that the record also confirms that apparently Friend's advice in November, 1972, was followed, because, as your Honor will recall, Mr. Monaco, who replaced Miller as the general manager in 1973 of ATC, and had previously been a tour director for them, testified that in late '72 or early '73, the sales approach at ATC was in fact changed. It had previously emphasized investment, he said. Thereafter it emphasized a better way of life.

Furthermore, I think it is relevant to note that the film which came into use in late '73 or early '74, the Vaughn-Bondy film, also stresses life at Rio and not any kind of investment.

And finally I note that the witness Mr. Miller testified that salesmen were ultimately told that they couldn't refer to investments in any context whatsoever; the emphasis was to be on relocatin at Rio.

In short, the record is absolutely devoid of any evidence of Mr. Friend's participating in any scheme.

To the extent there is any evidence at all in this regard, it shows precisely the contrary, that his eyes were wide open and he was giving good legal advice that is directly contrary to what the government now charges him with.

I might also note a couple of other things, and I won't go into any detail as to what other legal matters Friend was involved in. They really have nothing to do with this case, except that he was acting as a lawyer. And of course the record also shows, and there is no dispute about this, that Friend became involved in construction matters. Not only does that not have anything to do with the government's charges, I suggest that it proves precisely again the contrary.

Thus the government claims, I guess, that the defendants engaged in a scheme a major part of which was that they were telling the purchasers that the land would be developed when in fact they didn't intend to develop it.

Now, Friend's involvement in the construction therefore has got to be directly contrary to what the government charges him with. I mean, can it be, and maybe it is, that the government charges that the fact that Friend was involved in development proves that he never intended to develop the property?

Maybe that's what the government claims. If so, it is representative of the upsidedown kind of thinking that goes into any kind of charge against my client.

Mr. Friend, of course, testified in the grand jury as to housing statistics. In effect he read from a computer printout. But regardless of whether it was personal knowledge or not, what that printout showed was that half of the houses at Rio Rancho had been built after Friend joined the company, again hardly establishing any kind of a scheme not to develop.

The evidence is that Mr. Friend also testified as to how long it would take ultimately to fill up the entire development, and in this regard it similarly shows that he was simply basing his answers upon statistics used by the prosecutor and agreeing with her arithmetic.

But again, regardless of whether he was agreeing with her arithmetic, and I think that's all it was, or otherwise, the government proves nothing by this evidence in this case. In fact, the evidence doesn't even show that purchasers were told that the property would be developed within any specific period of time or within a short period of time. There perhaps may be one or two exceptions from occasional testimony of witnesses, but certainly there is no pattern; the concensus of testimony is that there were no such representations.

Every witness understood they were buying raw land without utilities, and understood their exchange, the exchange procedure, and that's already been gone into. Therefore, Friend's agreement with the prosecutor as to ultimate development is simply irrelevant to the case.

In fact, I might also note in this regard that of course it is not necessary for the property to be entirely developed in order to increase in value. Any development on any part of the land, and this is common sense, and there is also testimony to it, will increase the value of the property, all the property to some extent.

(Continued on next page.)

In summary, your Honor, there is little evidence in the record at all concerning Mr. Friend. The record shows that this company had been in business for nearly a decade before he joined it. It was at that time a major American Stock Exchange Company, represented by outstanding legal counsel, and it had been for years, with reputable people on the board of directors.

There was no reason for Friend to believe that he was joining in any fraud, and I don't think he was, because I don't think there was a fraud there.

But more importantly, or at least as importantly, what evidence there is as to his activity after he joined AMREP either is neutral in the government's charges or, I suggest, proves not only that he was notguilty but proves, perhaps beyond a reasonable doubt, that he clearly was not guilty of the charges which the government has levied against him.

One personal note, your Honor, in closing. We have lived with Mr. Friend, of course, for some period of time during this case, and I have watched his frustration in trying to figure out what it was he was charged with, and I was, frankly, having difficulty myself determining what it was.

Seeing his professional reputation --

MR. KAUFMAN: I object to this.

THE COURT: Sustained. It is not part of the motion for acquittal.

How long will you take, Mr. Hoffinger?

MR. HOFFINGER: I hope about six minutes, your Honor.

Your Honor, I move on behalf of my client Irving W. Blum, for a judgment of acquittal. I don't intend to go over the ground that either Mr. Arkin or Mr. Fleming discussed with your Honor on the question of whether there was anything here to begin with.

I will start with the proposition that, assuming there was for the purpose of the argument, I don't see how the evidence in this case connects Mr. Blum with any scheme. And I think that the evidence reveals that he had titles but no functions. And this evidence is revealed by the government's witnesses.

The government produced eight or nine former corporate employees and, I think, one present corporate employee, none of whom mentioned Mr. Blum's name except for two of them, and I will get to them in a minute.

I submit that the first witness that the government introduced that was a corporation employee of any importance was a man called Howard Mandel. He was witness jqjw 3

number four. He testified for two days, and he worked for the defendant corporations from 1963 through 1970, at the time that Mr. Blum was president and, later on, chairman of the board.

He ended up as a vice-president of sales, with an office at AMREP.

Now, he testified exhaustively about every facet of the operations in the company, primarily sales. But he never mentioned Mr. Blum's name, even though he was with the corporation for seven years. He never once mentioned his name, and neither did the prosecutor, although the prosecutor did mention the names of virtually every other defendant in questioning that witness.

Indeed, the prosecutor at one point read off a list of twenty-five names, your Honor, for identification. Mr. Blum's name was not on that list. That was Mr. Mandel.

Following Mr. Mandel, the next witness was Mr. Zaknich. Now, Mr. Zaknich worked for AMREP from 1967 to 1971, during which time Mr. Blum was president and later chairman. And Mr. Zaknich was a national sales manager. And then he was a vice-president of sales, replacing Mr. Mandel, who preceded him to the witness stand.

Now, he was on the witness stand for three days. And like Mandel, his testimony covered every phase of selling. The prosecutor saw to that. And he described the functions of various individuals in connection with corporate activities and with selling. He mentioned Mr. Blum's name once when he was asked who was president of AMREP in 1967.

Mr. Zaknich knew who held the title. He said, "Mr. Blum."

He also pointed out Mr. Blum in the courtroom. He never again mentioned Mr. Blum's name and he was never asked a question by the prosecutor as to what function, if any, Mr. Blum had. He obviously never spoke to Mr. Blum, because Mr. Blum had nothing to do with operations at all, as I suggested. The testimony indicates it was a title.

The third witness that I will mentioned is Mr. Perlmutter. Mr. Perlmutter joined AMREP in 1969 and he is still there. Mr. Perlmutter is secretary of AMREP Corporation as well as a vice-president of administration. He assumed those positions in 1973.

Now, from 1969 to the present Mr. Blum has been chairman of the board. So, Mr. Perlmutter, one would expect, who was on the stand for three days, would have quite a bit to say about Mr. Blum.

Now, what did he say about Mr. Blum? On direct examination he mentioned Mr. Blum's name once, when he was asked "Who was on the executive committee?" And he mentioned three names, and one of them was Mr. Blum.

On direct examination the prosecutor never asked him another question about Mr. Blum and he never again mentioned Mr. Blum's name on direct examination.

On direct examination there was one other thing that was very interesting. He was asked on direct, what offices are on the eighth floor, offices?" And he said, "All the corporate offices." That's what he responded, on page 3327. And then he proceeded to list the name of every corporate office. Guess whose name was missing, your Honor? Mr. Blum.

Now, on cross examination he was asked whether he knew Mr. Blum, and he said, "I know Mr. Blum just to say hello to."

Now, as I said earlier, Mr.Perlmutter, who was at the very hub of the corporate activity, described which corporate functions were performed by whom, and I submit to your Honor that his testimony demonstrates more categorically than anything that I can say that Mr. Perlmutter was a title without a function, which is what I said in my opening. He has no operational function at all except those ministerial functions required by his title.

Now, aside from the testimony of the witnesses, there were in this case a tremendous amount of documents introduced, thousands of pages. Those documents are consistent with the testimony of all the witnesses concerning Mr. Blum. Not one document, not one internal memorandum, not one piece of advice, not only correction, not one idea, nothing was ever sent to Mr. Blum or from him, in all the years that he had these titles in the company, except one letter, a letter sent by Howard Friedman on August 24, 1972 to ATC praising its sales record, and it had, showing a copy to Irving W. Blum, chairman of the board, and to Dan Friedman, vice-president of sales.

That letter, which is a letter which says nothing except that it praises the sales record, was obviously designed for the bulletin board of ATC.

I believe that the government feels that one of the most significant pieces of evidence it has is the evidence surrounding the Harman, O'Donnell report. Now, if we take a look at that evidence, according to the government that report presumably gives some kind of knowledge to the defendants which should have told them that what they were predicting was in fact something they jgiw 7

could not under any circumstances predict. That's what the government is claiming.

Not only is there not an ounce of proof that Mr. Blum received or saw or even heard of that lengthy report, but the evidence in this case demonstrates that he didn't. And in this connection, your Honor, there is a critical exhibit, Exhibit 985, a four page, single-spaced memorandum from one of the defendants addressed to a number of others outlining certain ideas about the Harman, O'Donnell report. Copies of that memorandum were sent to not only individual defendants but other people who were not defendants here. A copy was not sent to Mr. Blum.

And the same holds true for every single government exhibit relating to that Harman, O'Donnell report. And there are a number of those exhibits, a number of internal documents. Not one of them was ever sent to or came from Irving Blum. And the reason is obvious. Mr. Blum had no function except, as I say, the ministerial one that his title required.

I believe that the government in this case takes it, if not openly, acknowledges that there is no direct evidence to link Mr. Blum to any operations or sales of this company. And I believe that that's why they are suggesting, as they did in their brief, that there should be some other theory upon which Mr. Blum is to be held since there is no actual evidence or knowledge there should be a theory, and the theory is a melange of theories: A negligence theory, a respondent superior theory, perhaps a guilt by association theory because, after all, he had important titles.

Now, I'm not going to mention all of the cases that say that guilt by association might be all right for parlor conversations but has no room in a court of law. I don't have to mention those cases. We will have some of those in our brief.

But what I am saying is that that theory of guilt by association, or respondent superior, is a theory which the government has tried to extract from one or two Second Circuit cases which don't hold for that proposition.

The Andreadis case, which the government relies on heavily, is a case in which the corporation was one man, and Andre, and the Second Circuit said so.

Is the government suggesting that the corporation is one man, Irving Blum?

In the Andreadis case the Second Circuit made it plain that Andre was a man running everything, that he knew everything and he was doing everything.

The evidence demonstrates that that is no so here. The evidence demonstrates who was doing what.

Whether or not that behavior was legal or illegal is not something I am going to debate at this point. I think it was, if I may say, ably handled by other counsel. But what I am saying is that the Andreadis case takes Mr. Blum out. It doesn't put Mr. Blum in. The Andreadis case focuses on the most important person in the corporation, not on the least important person, which, although Mr. Blum is present, I submit he is.

Your Honor, I am not going to go into any policy reasons which indicate why this theory that is suggested by the government is a dangerous one. But if it obtained, then every corporate officer, simply by having a title, would be responsible not only for the behavior of inferiors on a respondent superior theory, but he would be responsible for the actions of every other corporate officer who is equal or even above him.

That is the theory that the government is suggesting. That theory, I submit, your Honor, has been rejected by other Courts and I ask your Honor to reject it here.

Thank you.

THE COURT: We will adjourn until tomorrow morning at 10:00 o'clock. The government will have an hour and a half to respond, and I will hear you the first thing in the morning.

(An adjournment was taken to Wednesday, December 29, 1976, at 10:00 o'clock a.m.)

EXHIBIT INDEX

Government	Identification	In Evidence
1570	5830	
1571	5830	
171-A	5843	
172-A	5843	
173-A	5843	
171,172,173		5845
175-A	5845	5846
175		5846
1550	5851	5855
1551		5856
1552		5860

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hpjb

UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al.

December 29, 1976
10:25 a.m.

1. am

oOo

THE COURT: Mr. Lavinsky, you may proceed.

MR. LAVINSKY: Your Honor, in reviewing the record, I noticed that the motion for judgment of acquittal that I made yesterday on page 5923 of the transcript indicates a motion only for AMREP Corporation. I moved on behalf of both AMREP Corporation and ATC Corporation.

THE COURT: I understand. At least my notes show you did.

MR. LAVINSKY: Also, your Honor, I have been asked by Mr. Arisohn in his absence to make a similar motion or judgment of acquittal [illegible] behalf of the corporate defendant Rio Rancho.

THE COURT: I gather that's what Mr. Arkin did. He mentioned a corporation somewhere in the beginning.

MR. LAVINSKY: As long as the record is clear the motion has been made on behalf of all the corporate defendants.

Also for the record I would like to renew on behalf of all the defendants for a motion to sever the defendant Solomon Friend in the event your Honor does not grant his motion for acquittal.

THE COURT: The motion is already before me to sever.

MR. LAVINSKY: Thank you, your Honor. And finally on behalf of all of the defendants, I would like to move that the various counts and allegations of the indictment referred to in the brief that we submitted to your Honor last night be stricken from the indictment.

THE COURT: I think if you want to do it you better read it into the record.

MR. LAVINSKY: Your Honor, it is fairly substantial.

THE COURT: The brief can be lost.

MR. LAVINSKY: Ms. Thompson will read it.

MS. HYNES: Your Honor, do you want the government to respond "testimony by"?

THE COURT: That's up to you. I was going to strike most of this anyhow because of absence of proof.

MS. HYNES: Your Honor, we would like a --

THE COURT: To the extent you think you have something, you may respond. I am sure there are many that have no basis.

MS. THOMPSON: Your Honor, all the defendants move that the following counts be stricken: Count 67, Count 28, Count 44, Count 61, Count 64, Count 7, Count 22, Count 29, Count 21, Count 23, Count 35, Count 36, and Counts 71, 72, 73, 74, 76, 77, 78, 79 and 80.

THE COURT: I would like to know why you want Counts 71 through 80.

MS. THOMPSON: Your Honor, there are two different bases. With regard to Counts 74, 76, 78 and 80, the government offered absolutely no proof.

THE COURT: I understand that. My question is why you want to dismiss all of the Counts 71 through 80.

MS. THOMPSON: With regard to those with which the government purported to offer some evidence it is our contention they have no relationship at all to what is necessary to prove a violation of Interstate Land Sale Full Disclosure Act and there is absolutely nothing connecting the commercials the government contend were played on any of the dates to any purchaser allegedly defrauded.

THE COURT: It doesn't have to be.

MS. THOMPSON: That's our contention, your Honor.

THE COURT: I overrule you on Counts 71 through 80 on the latter ground. I will dismiss some of those counts for other reasons.

MS. THOMPSON: With regard to allegations in the indictment of --

MS. HYNES: May we have a specification, your Honor, of the other counts for which Ms. Thompson is moving to dismiss?

THE COURT: No. You will have a copy. She is just making a record of the ones she wants dismissed.

MS. THOMPSON: With regard to those allegations to which there has been no proof at all the following are the paragraphs of the indictment which we move to have stricken in their entirety: paragraph 16v.

MS. HYNES: Do you want me to respond to that, your Honor?

THE COURT: No, let her go through the whole thing.

MS. THOMPSON: 17c; 17f; 17i; 17n; 17o; 17p,vi; paragraph 17p,xii; paragraph 17q,vi; paragraph 17r,i; paragraph 17s,vii; paragraph 17s,viii; and paragraph

17s,x.

Then, your Honor, there are a series of paragraphs in the indictment which we say should be stricken in part. I can go through those very quickly.

With regard to paragraph 12, line 4, the word "desert" should be stricken.

THE COURT: That's denied.

MS. THOMPSON: With regard to paragraph 13, lines 5 and 6 the words "and were unfamiliar with the real estate market there" should be stricken.

THE COURT: Denied.

MS. THOMPSON: With regard to paragraph 14, commencing with line 13, the following language should be stricken. Do you want me to read the full paragraph, your Honor?

THE COURT: You might as well.

MS. THOMPSON: "The purchaser usually had to pay a substantial premium to exercise the 'privilege' and usually ended up with a smaller piece of land and all purchasers of 'home site' lots could in no event exchange their lots for lots with utilities since not enough lands were set aside in company owned 'building areas' for that purpose."

THE COURT: That's for the jury. Denied.

MS. THOMPSON: Paragraph 15, commencing with line 8 states the following: "Whereas in truth and in fact as the defendants and their co-schemers then and there well knew, construction on most 'commercial,' 'multi-dwelling' and 'ranchette lots' were not feasible because they lacked access to utilities."

THE COURT: Denied.

MS. THOMPSON: Paragraph 15 commencing with line 13: "Utility services were miles away from most of these lots and the policies of the utilities companies precluded extension of services to all but a small percentage of these lots. Even if utility services could be obtained for these lots the purchasers would have to bear the cost and it would not be practical or economically feasible to do so on a lot by lot basis and the 'commercial,' and 'multi-dwelling lots," sold and offered for sale would not be surrounded by the type of contiguous development necessary for these lots to be put to the use for which they were supposedly created."

(Continued on next page.)

THE COURT: I didn't rule on that one.

MS. THOMPSON: Paragraph 6, line 9.

We would ask that the words "exceptionally poor" be stricken.

THE COURT: Denied.

MS. THOMPSON: With regard to paragraph 17a, line 4, we would again ask that the word "desert" be stricken.

THE COURT: Go ahead.

MS. THOMPSON: With regard to paragraph 17h, lines 3 and 4, we would ask that the words "which persons to be defrauded had been enticed to attend" be stricken, and this refers to invitations to the dinner parties, your Honor.

THE COURT: Leave it open.

MS. THOMPSON: With regard to paragraph 17j --

MS. HYNES: Your Honor, did you rule on that?

THE COURT: No. I said leave that open.

MS. HYNES: What is the specific reference?

MS. THOMPSON: 17h, lines 3 and 4, "which persons to be defrauded had been enticed to attend."

Paragraph 17j, commencing on line 6: "And made it virtually impossible for the persons to be defrauded to read and understand the contents of the property reports and offering statements before purchasing the land."

THE COURT: Leave that open.

MS. THOMPSON: Paragraph 17k, beginning on line 4: "To represent that certain lots were more valuable or more desirable than others being offered or were located in specially 'choice' areas, when they were not, and also to represent that the sale of the last of the 'choice' lots was imminent when in fact there were thousands of lots still available which were from an investment standpoint essentially the same."

THE COURT: Denied.

MS. THOMPSON: Paragraph 17l, beginning on line 7,i: "To discourage purchasers from attempting to exercise the refund privilege."

THE COURT: Read that again.

MS. THOMPSON: This refers to the tours, your Honor, and the alleged purpose of the tours and what we moved to have stricken is "to discourage purchasers from attempting to exercise the refund privilege."

That's paragraph 17l, beginning on line 7. It's on page 10.

THE COURT: Denied.

MS. THOMPSON: Paragraph 17m, beginning on line 4: "And prevent potential investors and investors from learning any adverse information concerning the investment potential of Rio Rancho lots, such as the high number of lots being offered for resale and the absence of any active resale market. Furthermore, a visual inspection of the property either on tour or individually would not provide a purchaser with the necessary and relevant information to evaluate the investment potential of Rio Rancho lots."

THE COURT: Leave that open.

MS. THOMPSON: Paragraph 17p, line 4, which refers to the methods of sales presentations and includes the words "slides," and we move to have that reference stricken.

THE COURT: Denied. That's nit-picking, Ms. Thompson.

MS. THOMPSON: Okay. Paragraph 17s,ix, commencing on line 3: "And policies of the utility companies in extending their services were such that all but a small per cent" --

THE COURT: Wait up. You have lost me. 17s --

MS. THOMPSON: ix. It appears on page 16. The portion that we move to have stricken commenced on line 3: "Policies of utility companies in extending their services were such that all but a small per cent of the" --

THE COURT: That's a similar item open. Go jbjb

ahead.

MS. THOMPSON: That's it, your Honor.

Should I finish reading it for the record?

THE COURT: Whatever you are asking in that brief for dismissal, judgment of acquittal or striking, you better put it in the record because I won't guarantee the brief is going to be found in the file.

MS. THOMPSON: I was in the middle of reading the quote so I will continue reading the quote.

THE COURT: Go ahead.

MS. THOMPSON: -- "persons to be defrauded would be unable to obtain water and utilities for their lots."

And that's the last one.

THE COURT: All right. Now, Mr. Rubino.

MS. HYNES: Your Honor, I would like to respond.

THE COURT: You have an hour and a half to respond. Go ahead, Mr. Rubino.

MR. RUBINO: Your Honor, the defendant Oberman moves for judgment of acquittal.

In this case, the government has made certain concessions which, standing by themselves, I submit warrant dismissal of all the charges against Mr. Oberman.

The government has conceded that by 1962, Mr. Oberman had resigned his position as president and director and in fact there is no proof that he ever attended a meeting in New York, a board of directors meeting or in fact that he ever came to New York under any circumstances.

The government has additionally conceded that Mr. Oberman resigned on September 30, 1969 and by 1971 had divested himself of all but about 2 per cent of the outstanding stock of the corporation.

They have conceded that they would offer no proof with respect to his post-retirement activity, for indeed there was none, and no proof was offered.

Despite these concessions, the government contends that his participation in the scheme is established by the fact that following his resignation in 1962 he remained a "managerial shareholder."

In addition, they contend he negotiated the purchase of the other 55,000 acres of land and subsequently negotiated for the purchase of 30,000 more acres.

They contend that he participated in talking with an analyst who was engaged to do a market study and most importantly they contend that present retirement land sales with which he was unconnected by any of the testimony in this case contemplated mailings which extended into the

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Loretta May
United States Attorneys Office
Southern District
5 May 77
3.50 pm